Easter Term

[2016] UKPC 13

Privy Council Appeal No 0107 of 2014

JUDGMENT

Société des Chasseurs de L'Ile Maurice and others (Appellants) vThe State of Mauritius and another (Respondents) (Mauritius)

From the Supreme Court of Mauritius

before

Lord Neuberger

Lord Mance

Lord Sumption

Lord Hughes

Lord Hodge

JUDGMENT GIVEN ON

16 May 2016

Heard on 26 April 2016

Appellants	Respondents
Raymond d'Unienville QC	James Guthrie QC
Antoine Domingue SC	
Yasser Caunhye	
(Instructed by Sheridans)	(Instructed by Royds LLP)

LORD HUGHES:

1.
In 2006 the Parliament of Mauritius passed new primary legislation for the control of firearms, the Firearms Act 2006 ("the 2006 Act"). It replaced an earlier statutory scheme which had been established by the Firearms Act 1940 ("the 1940 Act"), which Act was repealed by section 50 of the 2006 Act. Representatives of the hunting community in Mauritius mounted a legal challenge to section 4(2) of the new Act, which provides:

"(2) No individual shall hold more than two firearms at any time."

There had been no such numerical limitation in the 1940 Act.

2.
The hunters who brought these proceedings are well established and entirely respectable citizens. They have for many years held not only firearms licences granted under the 1940 Firearms Act, and now under the 2006 Act, but also game licences granted under successive statutes regulating hunting, and now also provided for by the 2006 Act (section 17). There is no suggestion that they are unsuitable for any personal reason to be in possession of firearms. Their concern is that a legitimate game hunter has a reasonable need for several firearms of different types and calibres according to the different species of game which he is likely to hunt. The effect of the new section 4(2) is that a hunter, like anyone else, is limited to a maximum of two guns.

3.
The legal challenge to the section, designed to preserve the freedom of hunting folk to possess an array of guns beyond two, was centred upon two key arguments:

(1)
those who held firearms licences under the 1940 Act had accrued or vested rights which the repeal of the Act by the 2006 Act did not, as a matter of construction, take away;

(2)
if the 2006 Act did take away such vested rights, it was unconstitutional and pro tanto void because contrary to section 8(1) of the Constitution, it amounted to the compulsory taking possession of property and/or the compulsory acquisition of rights over property.

4.
The challenge succeeded before the first instance judge. The Court of Appeal, however, reversed his decision. Hence this further appeal by the hunting claimants to the Board.

Accrued rights

5.
The claimants' argument is founded upon the principle of statutory construction set out in section 17(3)(c) of the Interpretation and General Clauses Act 1974. That provides that as a matter of general interpretation (and subject of course to express provision to the contrary):

"(3) … the repeal of an enactment shall not -

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under the repealed enactment."

6.
There is no doubting this general principle of statutory interpretation, which applies unless clear statutory language commands the conclusion that the removal or modification of accrued rights was indeed intended. It is allied to the similar principle of statutory interpretation that a statute will be assumed to be prospective, rather than retrospective, in effect, unless the contrary necessarily appears. However, before section 17(3)(c) can be called into service, there must be a right acquired or accrued under the previous, now repealed legislation.

7.
The Firearms Act 1940 provided for the issue of firearms licences, and, by section 3(1), made it unlawful to possess firearms except under the authority of such a licence. The grant of licences was

dealt with by section 4. The issuing authority was the Superintendent of Police in the district where an applicant for a licence resided. Section 4(2)(a) provided that the Superintendent “shall … grant” a licence where satisfied that the applicant had a good reason for having a firearm in his possession and could be permitted to do so without danger to public safety. Supplemental provisions enabled the police to impose conditions on the licence and to specify the firearm(s) to which it applied. The practice was to issue one licence for each gun.

8.
A firearms licence under section 4 of the 1940 Act was, by section 4(4)(a), to run until the end of the calendar year in which it was issued. Section 4(4)(a) went on to provide that a licence:

“… shall, subject to subsection (7) be renewable annually between 1 and 31 January.”

Section 4(7) then provided that the Commissioner of Police could cancel, or refuse to renew, a firearms licence, but only for cause shown, such as where he was not satisfied that the holder had, or continued to have, good reason for possessing a gun, where he considered cancellation or refusal necessary for the maintenance of public safety and the peace, or where the holder was prohibited from holding, or unfit to be entrusted with, a gun. To the extent that the Court of Appeal proceeded on the basis that a 1940 Act licence could be cancelled or its renewal refused “at any time”, it therefore fell into error; cause for non-renewal or cancellation was required. For the claimants, Mr d’Unienville QC submitted that for this reason the holders of 1940 Act licences had an accrued right to renewal of their licences unless cause were shown for refusing it. In consequence, he contended, the 2006 Act must, according to the principle of statutory construction set out in section 17(3)(c) of the Interpretation and General Clauses Act, be read as not affecting that right, despite its repeal of the 1940 Act.

9.
The difficulty with that argument is that the 2006 Act expressly re-shaped the regime for the issue of licences. It expressly did not continue the 1940 Act scheme; rather, it replaced it with a different one. Under the 2006 Act, by section 8 the Commissioner for Police (now the issuing authority) “may grant”, (rather than “shall … grant”) a licence if satisfied that the applicant meets the same conditions of good reason and personal safety which were laid down in the earlier statute. Where previously section 3(1A) of the 1940 Act set out a number of types of person who were excepted from the requirement to hold a licence, including for example a carrier, a member of a rifle club and a person shooting game under the instruction of a licence holder, those exceptions are now much reduced in section 4(4) to police or prison officers and registered firearms dealers. The provisions for duration of licence and annual renewal are, although similar to those of the 1940 Act, re-enacted as part of the new scheme. By section 12 a new licence is, like its older precursor, valid for the calendar year and renewable annually. Section 14 provides for cancellation and refusal to renew, in terms which are similar to those of the 1940 Act, but are differently expressed. By reference back to section 6(2), for example, the tests for whether the holder remains a fit and proper person to have possession of a gun are more extensively defined and may potentially exclude more people. An entirely new requirement is introduced by section 6 for an applicant for a licence to pass a prescribed training course and obtain a competency certificate. The scheme introduced by the 2006 Act differs in other ways also from that of the 1940 Act. There are new controls on the export of firearms (section 21). A new category of particularly dangerous prohibited weapons is introduced (section 3 and Schedule 1). There is the new limit to two guns (section 4(2)). And section 17 introduces a new power for the Minister to make regulations for the registration of hunting associations and game shooting organisations, and for requiring them to keep records and make annual reports.

10.
The 2006 Act makes explicit its relationship to the earlier 1940 Act by sections 50 and 51. Section 50 simply repeals the 1940 Act in its entirety. Section 51 provides:

“(1) Any licence or permit issued under the repealed Firearms Act which has not expired on the coming into operation of this Act shall remain valid until the date of its expiry.

(2) Subject to subsection (1), any registration made under the repealed Firearms Act shall be deemed to be a registration under this Act.

(3) Where this Act does not make provision for the necessary transition from the repealed Act to this Act, the Minister may make necessary regulations for such transition.”

Thus, the 2006 Act is expressly inconsistent with any possibility of licences under the 1940 Act continuing in force, except to the end of the year of validity. It is equally inconsistent with the possibility that any right to renewal of a 1940 Act licence is preserved. The carrying over of any such right, assuming in the claimants’ favour that it ever existed as a right rather than an expectation, is quite incompatible with the creation of a new licencing and control scheme by the 2006 Act. It is a necessary consequence of section 51 that, except as it stipulates, the position for the future is to be governed by the new Act and no longer by the old. Section 17(3)(c) of the Interpretation and General Clauses Act cannot prevail against these explicit provisions.

11.
Mr d’Unienville urged upon the Board the proposition that the 2006 Act was never intended to catch those such as the claimants who had a long-standing history of legitimate use of multiple guns. At first instance, the judge seems to have accepted that it was not, but that conclusion is unsupportable for the reasons given. Whether or not sufficient consideration was given to the particular needs of such as the claimants the Board cannot say, and this was a matter for Parliament and not the courts. It is apparent from the Parliamentary debate which the claimants put before it that there was reference to the Society, albeit before an amendment to section 4(2) made the restriction which it imposed a narrower one by making the two-gun limit apply whether or not the guns were of similar type. But it is transparently clear that the intention was to impose a general scheme, just as the 1940 Act had done, but differently expressed so as to be geared to modern needs. There may have been many special interest groups who might have wished to claim individualised treatment under the new 2006 Act, amongst them perhaps collectors, researchers or target shooters. If any or all of them were to be excluded from the general scheme inaugurated by the Act, it was necessary for them to be specifically excluded, or separate provision for them made.

12.
The judge at first instance also concluded that because the 2006 Act is prospective rather than retrospective, the claimants’ position under the 1940 Act was not affected. That conclusion does not, however, follow from the premise. The 2006 Act is indeed prospective, as section 51(1) confirms. But that is a very long way from saying that it has not brought into its new scheme all those who wish to hold firearms licences from its commencement into force onwards, rather than only those who have never had them before. It very clearly does apply to all who seek licences from commencement onwards.

Section 8 of the Constitution

13.

Section 8 of the Constitution provides:

“(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired …” [except where necessary or expedient in pursuit of various listed public purposes.]

By section 2 of the Constitution, it is the supreme law of Mauritius and any other law which is inconsistent with it is, to the extent of the inconsistency, void.

14.
Whilst it may well be that, if the issue had arisen, the scheme of gun control introduced by the 2006 Act could have been justified in pursuit of public safety even if there was compulsory deprivation of possession, no argument on that question has ever been advanced in this case before any of the three courts in which it has been considered. Thus the issue raised in argument before the Board is whether the 2006 Act amounted to such a compulsory taking of possession, or compulsory acquisition of a right over property.

15.
The 2006 Act came into force in September 2007. Shortly thereafter, in December, the Commissioner of Police issued a public communiqué for the attention of licence holders. In it he drew attention to the new two-gun limit contained in section 4(2), as well as to the new requirement for competency certificates. In relation to the two-gun limit, he went on to say:

“Individuals holding more than two firearms are requested to contact the Firearms Officer of the District of renewal for keeping of any firearm in excess of the two firearms allowed by law in the safekeeping service provided by the Commissioner of Police.”

The reference to the safekeeping service was to section 22 of the 2006 Act. That section calls on the Commissioner to provide such a service, on such terms and conditions and on payment of such fees as he may determine. It further provides that if the Commissioner fixes a period for which he is prepared to keep a gun in this way, and the owner does not collect it within that time, the Commissioner may impound it. Mr d’Unienville urged on the Board the contention that by this communiqué the police were calling for the surrender of any gun held beyond the limit of two, and were thus either compulsorily taking possession of it, or at least were compulsorily acquiring a right over it, contrary in either case to section 8 of the Constitution. There was, he submitted, no warrant in the 2006 Act for any such compulsory surrender.

16.
The Court of Appeal dismissed the complaint of inconsistency with the Constitution on the ground that possession is not the same as ownership. The owner of a third gun did not lose ownership by complying with the suggestion made in the Commissioner’s communiqué. If a third gun was deposited with the Commissioner as suggested, the Commissioner did not become the owner of it. The owner could dispose of it as he wished. The only restriction imposed on him by the 2006 Act was that he could not continue in possession of it if it took him over the limit of two.

17.
The Board agrees that ownership and possession are different things. But there is a more fundamental objection to the constitutional complaint made by the claimants. As Mr d’Unienville was careful to point out, section 22 imposes no mandatory requirement on the owner of a firearm. Rather, it provides a service of which he may take advantage at his option. It does indeed afford him one way of

complying with the new two-gun limit whilst retaining ownership of his third, or fourth (etc), gun(s). But it is in no sense a compulsory means of complying. The Court of Appeal was plainly right to draw attention to the continuing powers of ownership retained by the owner. He need not put a third gun into police safekeeping. He can also sell the gun, either to another holder of a licence, or to someone who will apply for a licence, or to a registered firearms dealer. He could also give the gun away, for example to a relative or friend who would be in a position to apply for a licence, or indeed he could destroy the gun. Thus, even if there could be mounted an argument that compulsory acquisition by the Commissioner of possession of the gun could amount to sufficient interference with the bundle of rights which constitute ownership to infringe section 8 of the Constitution (which argument was not addressed to the Board), there was no such compulsion in the Commissioners' communiqué or in section 22 of the 2006 Act.

18.
For completeness, the Board ought to refer to section 12(4) of the 2006 Act, which does impose a duty to surrender a gun which a person holds if his licence for it expires and he fails to renew it. Similar considerations apply to that provision. It does not give the Commissioner ownership. The gun owner only has to surrender if his continued possession of the gun has become unlawful because he has not renewed the licence. If he acts before the licence expires, he can deal in any lawful way he likes with the gun. Even if he does surrender it, because he has passed the expiry date, he still retains the right to sell or otherwise dispose of his property. To the extent that section 12(4) amounts to a compulsory deprivation of possession, it is an inevitable concomitant of any system for licensing the possession of firearms that once the licence goes, continued possession without it is unlawful. Whatever other arguments there might be about justification for the details of the 2006 scheme, no one has suggested, nor could it be suggested, that a provision such as section 12(4) is other than justified in the public interest. It existed also under the 1940 Act, in section 4(9)(a).

Conclusion

19.
For these reasons, which are similar, but not identical, to those of the Court of Appeal, the Board is satisfied that neither of the arguments advanced by the claimants can succeed. In those circumstances their appeals must be dismissed.

20.
The parties should make written submissions as to the proper costs order which should follow. Each should lodge, and serve on the other, within 21 days of the promulgation of this judgment, written submissions setting out the form of order sought and brief reasons therefor; if so advised a party may lodge and serve a response to the submissions of the other within 14 days thereafter.