

SUPREME COURT OF QUEENSLAND

CITATION: *Gunter v Bloxsom; Gunter v Woodford & Another* [2001] QSC 351

PARTIES: **RICHARD STEPHEN GUNTER**
(applicant)
v
JOHN CHARLES BLOXSOM S.M.
(first respondent)
GREGORY CON MURPHY
(second respondent)
ROSS WOODFORD S.M.
(third respondent)

RICHARD STEPHEN GUNTER
(applicant)
v
ROSS WOODFORD S.M.
(first respondent)
TONY ELLIS MERRELL
(second respondent)

FILE NO: S 882/95
S 7751/97

DIVISION: Trial Division

PROCEEDING: Application

DELIVERED ON: 27 September 2001

DELIVERED AT: Brisbane

HEARING DATE: 24 September 2001

JUDGE: Wilson J

ORDERS: **In S 882/95: Application dismissed**
In S 7751/97: Application dismissed

CATCHWORDS: ADMINISTRATIVE LAW – JUDICIAL REVIEW
LEGISLATION – where applicant sought reopening of
decision not to reopen judicial review proceeding which had
been determined – where applicant sought to make further
legal argument – where no new factual evidence had become
available since judicial review

Constitution (Office of Governor) Act 1987 (Qld)
Judicial Review Act 1991 (Qld), s 48
Justices Act 1886 (Qld), s 222
Supreme Court Act 1995 (Qld)
Supreme Court of Queensland Act 1991 (Qld)
Uniform Civil Procedure Rules 1999 (Qld)

COUNSEL: In No 882/95:
The applicant appeared on his own behalf
LY Paramasivam for the first and third respondents
MO Plunkett for the second respondent

In No 7751/97:
The applicant appeared on his own behalf
LY Paramasivam for the first respondent
PG Cleary (solicitor) for the second respondent)

SOLICITORS: In No 882/95:
The applicant appeared on his own behalf
Crown Solicitor for the first, second and third respondents

In No 7751/97:
The applicant appeared on his own behalf
Crown Solicitor for the first respondent
City Solicitor, Ipswich City Council for the second
respondent

- [1] **WILSON J:** These are applications to reopen judgments of Justice Mullins delivered on 3 September 2001.

Background – No 882 of 1995

- [2] On 4 December 1995 the applicant Richard Stephen Gunter filed an application for judicial review of “the decision/order of J.C. Bloxsom S.M. given in the Magistrates Court in Ipswich on 7th November 1995, whereby the three (3) charges brought against the applicant under MR 7/95 by the Q’ld Department of Transport, Road Transport and Traffic Division, for statutory infringements were upheld, and a fine and costs were awarded against the applicant” (SC No 882/95). That application was dismissed by Justice Fryberg on 6 September 1999, and an application for leave to appeal was dismissed by the Court of Appeal on 22 September 1999.
- [3] The applicant brought an unsuccessful collateral proceeding for an extension of time for service of a notice under s 222 of the *Justices Act 1886* in the District Court. That matter went to the Court of Appeal and then to the High Court.
- [4] On 23 July 2001 the applicant filed an application to reopen the judicial review application which had been dismissed by Justice Fryberg on 6 September 1999. That application came before Justice Mullins, who dismissed it on 3 September 2001.

- [5] On 14 September 2001 the applicant filed an application to reopen the application which was before Justice Mullins. This application is presently before me.

Background – No 7751 of 1997

- [6] On 1 September 1997 the applicant filed an application to review “the determination/order of R. Woodford S.M., given in the Magistrates Court in Ipswich on 11th August 1997, on the application of T.E. Merrell, whereby a complaint, brought against the Applicant for infringement of I.C.C. Local Law Chapter 12 pertaining to unrestrained dogs in public places, was upheld, and a fine and costs were awarded against the applicant” (SC No 7751/97). That application was dismissed by Justice de Jersey on 24 September 1997.
- [7] On 23 July 2001 the applicant filed an application to reopen the judicial review application which had been dismissed on 24 September 1997. That application came before Justice Mullins who dismissed it on 3 September 2001.
- [8] On 14 September 2001 the applicant filed an application to reopen the application which was before Justice Mullins. This application is presently before me.

Basis of Justice Mullins’ Decisions

- [9] Justice Mullins did not determine finally whether she had power to reopen the judicial proceedings. She said that, even if she did have the requisite power, she would decline to do so in the exercise of her discretion because the applicant had no real prospects of succeeding on any of the matters he wished to agitate.

Application for Adjournment

- [10] The wishes to raise points of law of a constitutional nature arising from the fact that no referendum was held before the *Constitution (Office of Governor) Act 1987* was assented to. He is not seeking to rely on further evidence (other than the failure to hold a referendum, which I regard as a matter of public knowledge at all material times). As I understood his submissions before me, the validity of the *Judicial Review Act 1991*, the *Supreme Court of Queensland Act 1991*, the *Supreme Court Act 1995* and the *Uniform Civil Procedure Rules* is thereby impugned. There are both federal and state aspects to his argument. He has commenced, or is in the process of commencing, proceedings in the High Court to ventilate the federal aspect of his argument. He asked me to adjourn the applications presently before me to a date to be fixed so that the High Court proceedings could be determined first.
- [11] The respondents opposed any adjournment, and asked me to dismiss the applications as an abuse of process and/or vexatious and/or oppressive pursuant to s 48 of the *Judicial Review Act*.

Power to reopen?

- [12] There is no power to reopen the decisions dismissing the judicial review applications to allow the presentation of further legal arguments.

[13] Further, I do not have power to reopen the applications which were before Justice Mullins to allow the applicant to raise further arguments of law. The proper way to challenge Her Honour's decision is through the appellate process.

Conclusion

[14] In the circumstances, I refuse to adjourn the applications filed on 14 September 2001. Those applications are dismissed.