

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.11A OF 1988

BETWEEN:

BEAUSEJOUR ESTATES LTD

Appellant

and

THE ATTORNEY GENERAL OF GRENADA

Respondent

Before: The Rt. Hon. Sir Vincent Floissac - Chief Justice
The Hon. Mr. C.M. Dennis Byron - Justice of Appeal
The Hon. Dr. Nicholas J.O. Liverpool - Justice of Appeal

Appearances: Mr. Derek Knight Q.C. (holding papers for Mr. Carol
Bristol, Q.C.) for the Appellant
Dr. Francis Alexis, Attorney-General and Miss
Tamara Gill for the Respondent

1993: November 9, 10, 22.

JUDGMENT

SIR VINCENT FLOISSAC, C.J.

This appeal relates to the compulsory acquisition of the appellant's lands situate at Beausejour in the parish of Saint George in the island of Grenada. It is an appeal from a decision which *Patterson J* delivered on 27th May 1988 and whereby the learned judge dismissed the appellant's application by Motion for an order "that the Land Acquisition Ordinance Cap.153 of the Revised Laws of Grenada does not comply with the requirements of section 6(1) of the Grenada Constitution Order 1973" or alternatively for an order "that the said acquisition be declared null and void on the ground that the Government of Grenada is unable to make prompt payment of full compensation to the Appellant."

The contentions on behalf of the appellant vacillated during the course of the hearing of the Motion and of this appeal. Ultimately, the issues appeared to be (1) whether the Ordinance (the Land Acquisition Ordinance Cap 153) is constitutionally invalid on the ground that it does not provide for the prompt

payment of full compensation as required by section 6(1) of the Constitution (the Constitution of Grenada) (2) whether the Ordinance can and should be validated by the constitutional construction prescribed by paragraph 1(1) of the Transitional Provisions contained in Schedule 2 of the Constitution Order (the Grenada Constitution Order 1973 No. 2155) and (3) whether the acquisition itself is invalid on the ground that the procedural provisions of the Ordinance were not observed.

(1) Validity of the Ordinance

Section 6(1) of the Constitution provides that:

"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 provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

In *Grand Anse Estates Limited v DeGale et al* (Grenada Civil Appeal No. 3 of 1976), this Court decided (1) that the Ordinance does make provision for the prompt payment of full compensation (2) that section 19(a) of the Ordinance is inconsistent with section 6(1) of the Constitution because section 19(a) limits the value of the acquired land to a value twelve months prior to the date of acquisition and (3) that section 19(a) of the Ordinance can and should be brought into conformity with section 6(1) by construing section 19(a) to read that compensation must be assessed at the market value of the land at the date of acquisition.

Counsel for the appellant submitted that the decision in *The Grand Anse Case* was given *per incuriam* because the attention of this Court was not then drawn to the provisions of section 76 of the Constitution. Section 76 provides as follows:

- "(1) No moneys shall be withdrawn from the Consolidated Fund except -
- (a) to meet expenditure that is charged upon the Fund by this Constitution or by any law enacted by Parliament; or
 - (b) where the issue of those moneys has been authorised by an Appropriation law or by a law made in pursuance of section 78 of this Constitution.

- (2) Where any moneys are charged by this Constitution or any law enacted by Parliament upon the Consolidated Fund or any other public fund, they shall be paid out of that fund by the Government of Grenada to the person or authority to whom payment is due.
- (3) No moneys shall be withdrawn from any public fund other than the Consolidated Fund unless the issue of those moneys has been authorised by or under any law.
- (4) Parliament may prescribe the manner in which withdrawals may be made from the Consolidated Fund or any other public fund."

Section 78 of the Constitution (which is referred to in section 76) provides that:

"Parliament may make provision under which, if the Appropriation law in respect of any financial year has not come into operation by the beginning of that financial year, the Minister for the time being responsible for finance may authorise the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure necessary to carry on the services of the Government of Grenada until the expiration of four months from the beginning of that financial year or the coming into operation of the law, whichever is the earlier."

In reply to the submission based on section 76 of the Constitution, Counsel for the respondent referred to section 29 of the Ordinance and section 7 of the Existing Laws (Adaptation) Ordinance No. 7 of 1967. Section 29 of the Ordinance provides that:

"All amounts which have been awarded by way of compensation under this Ordinance, including interest and costs to be paid by the authorized officer, and all other costs, charges and expenses which shall be incurred under the authority of this Ordinance, shall be paid out of the Treasury of the Colony on the warrant of the Governor."

Section 7 of the Existing Laws (Adaptation) Ordinance provides that:

"Where in any existing law it is provided that -

- (a) any expenditure is a charge on the public funds of the former Colony of Grenada;
- (b) any money for meeting expenditure shall be appropriated out of the said public funds, or out of the Consolidated Revenue Fund of the Territory; or
- (c) any person is entitled to be paid or to recover from the said funds any expenditure incurred by him or defrayed by him pursuant to any law;

that provision shall have effect as if it charged such expenditure on the Consolidated Fund."

In my judgment, monies may be withdrawn from the Consolidated Fund for the purpose of paying compensation awarded under the

Ordinance and may be so withdrawn under the authority of section 76 of the Constitution, because the payment of such compensation is expenditure specifically charged upon the Fund by section 29 of the Ordinance and section 7 of the Existing Laws (Adaptation) Ordinance. The result is that the Ordinance is not inconsistent with and is not rendered invalid by section 76 of the Constitution. Accordingly, the Ordinance must be held to be constitutionally valid unless the decision in the *Grand Anse Case* is wrong and the Ordinance cannot be validated by the Constitutional construction prescribed by paragraph 1(1) of the Transitional Provisions,

(2) Constitutional Construction

Paragraph 1(1) of the Transitional Provisions provides that:

"The existing laws shall, as from the commencement of the Constitution, be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution and the Courts Order."

Counsel for the appellant submitted that the Ordinance (which is admittedly an "existing law" within the meaning and intent of paragraph 1(1) of the Transitional Provisions) cannot be construed so as to bring it into conformity with the Constitution. In support of his submission, counsel relied on the decision of this Court in *Charles v Phillips & Sealey* (1967) 10 W.I.R. 423 where *A M. Lewis - C.J.* (delivering the judgment of this Court) said (at p. 432).

"Where a law cannot be brought into conformity with the Constitution by construction alone by the application of s.103 (1) or (2) because its provisions differ substantially from or are in conflict with those of the Constitution then the Governor is empowered by sub-s.(3) by Order made before September 1, 1967, to make such amendments as may appear to him to be necessary for that purpose."

That decision was however disapproved (if not overruled) by the Privy Council in *A.G. of St.Christopher v Reynolds* (1979) 3 AER 129. Both cases were concerned with the question whether section 3(1) of the *Leeward Islands (Emergency Powers) Order in Council 1959* and regulation 3(1) of *The Emergency Powers Regulations 1967* could be construed so as to bring them into conformity with the

Constitution of Saint Christopher, Nevis and Anguilla as required by section 103(1) of that Constitution. Delivering the opinion of the Board in *Reynolds Case*, Lord Salmon said (at p.136);

"In *Charles v Phillips and Sealey* and in *Herbert v Phillips and Sealey* the Court of Appeal held (1) that the provisions of s 3 of the 1959 Order in Council were not in conformity with the Constitution and (2) that they were so much out of conformity, that it was impossible to construe them so as to bring them into conformity with the Constitution and that, therefore, the Emergency Powers Regulations 1967 which purported to be made under that Order in Council were invalid. Their Lordships agree with the first part of that finding but not with the second.

The law laid down by s 3 of the 1959 Order in Council (as it originally stood) and by s 14 of the Constitution had the same purpose, namely, to ensure that measures could immediately be taken during a state of public emergency, to arrest and detain persons whom it was necessary to arrest and detain in order to secure public safety or public order. The difference between the two laws was that the first law gave an authority absolute discretion, and indeed the power of a dictator, to arrest and detain anyone, whilst s 14 of the Constitution allows a law to be enacted conferring power to arrest and detain only if it was reasonably justifiable to exercise such a power. It is this very real difference which makes the 1959 Order in Council out of tune with the Constitution. If the Court of Appeal were right in concluding that no modification or adaptation or qualification or exception could bring the Order in Council into line with the Constitution, then they would have been plainly right in holding that the Order in Council was nugatory and the Emergency Powers regulations 1967 invalid. Their Lordships cannot, however, accept that the Constitution would have preserved the life of the 1959 Order in Council for any period if the Order in Council could not be construed under s 103 of the Constitution so as to bring it into conformity with the Constitution. It is inconceivable that a law which gave absolute power to arrest and detain without reasonable justification would be tolerated by a Constitution such as the present, one of the principal purposes of which is to protect fundamental rights and freedoms. Their Lordships do not consider that there is any difficulty in construing the Order in Council by modification, adaptation, qualification or exception so as to bring it into conformity with the Constitution."

Their Lordships then proceeded to construe the 1959 Order and the 1967 Regulations so as to bring them into conformity with the Constitution. They construed section 3(1) of the 1959 Order by inserting therein the words "to the extent that these laws authorised the taking of measures that are reasonably justifiable for dealing with the situation that exists in the state during any such period of public emergency". They construed regulation 3 (1) of the 1967 Regulations by interpreting the words "if the Governor is satisfied" to mean "if the Governor is satisfied on reasonable grounds" and by interpreting the word "necessary" to mean "reasonably necessary and justifiable".

Reynolds Case thus exemplifies the fundamental difference between ordinary statutory interpretation and constitutional construction (i.e. construction decreed by a "Westministerial" Constitution for the purpose of saving or validating existing laws which were in force immediately before the Constitution). In the case of ordinary statutory interpretation of existing laws, we are concerned with the intention of the legislature or Parliament which enacted those laws. In the case of constitutional construction of existing laws, we are concerned with the common intention of Her Majesty in Council and of the Parliament which requested the Constitution. Because of this fundamental difference between the ordinary statutory interpretation and the constitutional construction of an existing law, it is possible under the constitutional construction of the words of an existing law to ascribe to those words a meaning which they could not be held to bear under their ordinary statutory interpretation. That is why their Lordships in **Reynolds Case** had no difficulty in construing the 1959 Order and the 1967 Regulations with such generosity.

Like their Lordships in **Reynolds Case**, I have no difficulty in construing the Ordinance "with such modifications, adaptations, qualifications and exceptions as may be necessary to bring (the Ordinance) into conformity with the Constitution". If the objection to the Ordinance is that it does not provide for the prompt payment of full compensation, I would construe the Ordinance in the manner and with the object prescribed by paragraph 1(1) of the Transitional Provisions. This means that (1) wherever the word "compensation" appears in the Ordinance, that word must be construed to mean "full compensation" (2) wherever the word "payment" or "paid" appears in the Ordinance in relation to compensation, that word must be construed to mean "full payment" or "fully paid" as the case may be and (3) wherever the word "award" appears in the Ordinance in relation to compensation, that word must be construed to mean "award of prompt payment of full compensation." If the objection to the Ordinance is that it does

not expressly state that compensation awarded thereunder shall be a charge upon the Consolidated Fund, I would construe the words "shall be paid out of the Treasury" appearing in section 29 of the Ordinance to mean "shall be a charge upon and shall be paid out of the Consolidated Fund" and would do so without prejudice to the provisions of section 7 of the Existing Laws (Adaptation) Ordinance. Construed with those "modifications, adaptations, qualifications and exceptions" (all of which are authorised and commanded by paragraph 1(1) of the Transitional Provisions), the Ordinance cannot be said to be inconsistent with the Constitution or to be constitutionally invalid on the ground that it does not provide for the prompt payment of full compensation.

(3) Breaches of procedural provisions

In his written submissions to this Court, counsel for the appellant stated that:

"The issues in this appeal are (1) Does the Land Acquisition Act (hereinafter THE ACT) make provision for the prompt payment of full compensation for the acquisition of land? (2) If it does, were the procedures for the acquisition of portions of the Beausejour Estate carried out by the authorised officer?"

In his oral submissions to this Court on the second issue, counsel referred this Court to the last two sentences of his written submission which read as follows:

"Were the procedures for the acquisition of portions of the Beausejour Estate carried out by the authorised officer? There was no evidence submitted to the learned trial judge from which he could find that the authorised officer carried out any of the duties placed on him by the Act."

It is not surprising that there was no such evidence because there was no allegation in the appellant's Notice of Motion that the authorised officer failed to carry out any of his statutory duties. In the course of his oral submission, counsel for the appellant complained that the land was not surveyed before its compulsory acquisition and that it is impossible to identify the land compulsorily acquired. But this complaint was not made in the Notice of Motion. Counsel referred to s 7(1) of the Ordinance which provides that:

"As soon as may be after any land has been acquired compulsorily, the authorized officer shall, if the boundaries of the land have not been set out or if they cannot be identified by reference to any plan, cause the same to be set out, and he shall also issue a notice of acquisition in accordance with the provisions of this section."

Section 7(1) itself acknowledges that land may be compulsorily acquired before any survey thereof. Failure to survey is at most a breach of statutory duty which does not affect the validity of the acquisition.

It is evident that the sole or main object of this appeal was to determine the issue of the constitutional validity or otherwise of the Ordinance. I have given my judgment on that issue. In accordance with that judgment, I would dismiss the appeal with costs to the respondent.



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SIR VINCENT FLOISSAC
Chief Justice

BYRON J.A.

I have had the opportunity of reading the judgments of Sir Vincent Floissac, Chief Justice and Justice of Appeal, Dr. Nicholas J.O. Liverpool, and can happily avoid repetition.

This appeal came on for hearing before the Grenada Court of Appeal on 31st March 1989, but no order purporting to represent the judgment of that court had been filed before the Court was abolished. After hearing counsel on both sides an order was made for the appeal to be heard by this court.

It was apparent from the notice of appeal and the skeleton arguments, that the main contention of the appellant was that the Land Acquisition Act was inconsistent with section 6(1) of the Grenada Constitution Order 1973 which required it to provide for

the prompt payment of full compensation.

I have concluded that the appeal is unmeritorious. The Privy Council's decision in the *Attorney-General of St. Christopher & Nevis, Anguilla v Reynolds* [1970] 3 All E.R. 129 authoritatively dispels any doubt that paragraph 1(1) of the Transitional Provisions contained in Schedule 2 of the Grenada Constitution Order 1973 obliges the court to construe the Land Acquisition Ordinance "with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with" section 6(1) of the Constitution.

I agree with the reasoning of and conclusions reached by learned Chief Justice and concur with the declarations he has made. Accordingly, I, too, would dismiss the appeal with costs.

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C.M.DENNIS BYRON
Justice of Appeal

LIVERPOOL, J.A.

I have had the advantage of reading in draft the judgment of the learned Chief Justice and I agree with it. I would however like to add a few words of my own on the history of this matter.

On 19 September, 1986 the appellant moved the High Court in Civil Suit No. 301 of 1986 for a declaration that the Land Acquisition Act (Chapter 153) does not comply with the requirements of the provisions of section 6(1) of the Grenada Constitution Order 1973 in that the Act does not provide for the prompt payment of full compensation; alternatively for a declaration that the acquisition be declared null and void on the ground that the Government of Grenada is unable to make prompt payment of full

compensation. Patterson J. held that the Act as construed by the Court of Appeal in *Grand Anse Estates Ltd. v The Governor-General of Grenada and Others* (Civil Appeal No. 3 of 1976) did make provision for the payment of full compensation. He also held that the application for the alternative declaration was premature in that the negotiating procedures set out in the relevant sections of the Act had not been exhausted, and consequently there was no evidence upon which to found such a declaration. He therefore refused the declarations and orders sought and awarded costs to the respondent.

In Civil Suit No. 326 of 1987 between Rosie Modest and the Attorney-General and another, the plaintiff in that case sought several declarations which were in substance the same as sought in Suit No. 301 of 1986. The matter was heard by St. Paul J. who, in dismissing the motion, adopted the opinion of St. Bernard J.A. who had delivered the leading judgment in the Grand Anse case.

The appeals in both Civil Suits were heard by the Grenada Court of Appeal on 31 March, 1989 and judgment was delivered on 2 May, 1989. It was agreed by Counsel that both appeals would be heard together and the ruling on the Land Acquisition Act would be applied in both appeals. The Grenada Court of Appeal by a majority adopted the reasoning of St. Bernard and Peterkin JJ.A. in the Grand Anse case and dismissed the appeal with no order as to costs. This was Civil Appeal No. 4 of 1988 *Rosie Modest v The Attorney-General and Sylvester Sandy*).

When this appeal was restored to the list learned Counsel for the appellant informed the Court that whereas the issue as to the constitutionality of the Land Acquisition Act had been argued before the Grenada Court of Appeal in this case, there were other issues which had not been argued, and wished an opportunity to argue those points. Learned Counsel identified, before this Court, the issue to be "*Were the procedures for the acquisition of*

portions of the Beausejour estate carried out by the authorised officer?" In his skeleton argument for the purposes of this appeal learned Counsel for the appellant identified the issues as -

"1. Does the Land Acquisition Act (hereinafter the Act) make provision for the prompt payment of full compensation for the acquisition of land?

2. If it does, were the procedures for the acquisition of portions of the Beausejour estate carried out by the authorized officer?"

In my view the first issue need not have been argued before this Court in view of the agreement by counsel to be bound by the decision in the *Rosie Modest Appeal* on this issue. Learned, experienced and Senior Counsel who appeared before the High Court and the Grenada Court of Appeal agreed that both appeals would be heard together and they also agreed to abide by the decision of that Court on the main ground of appeal in both appeals, namely, the issue of the Land Acquisition Act and its conformity with the requirements of section 6 of the Grenada Constitution Order. That much is quite clear from the exchange of correspondence which passed between learned Counsel and the President of the Grenada Court of Appeal which was passed to this Court for information. Section 6(1) provides that -

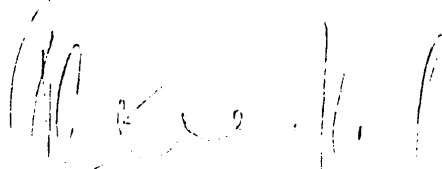
"No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation".

The relationship of the Land Acquisition Act to this provision of the Constitution was exhaustively examined by *McKay, J.A.* who delivered the judgment of the Court of Appeal by which the parties, through their Counsel, agreed to be bound.

In the alternative I would hold that this Court is bound by the decision in the *Grande Anse* case and the *Rosie Modest* case on the principles of *stare decisis* formulated in the case of *Young v Bristol Aeroplane Co. Ltd. (1944) 2 All E.R. 293* (affirmed (1946) 1 All E.R. 98). See also *Attorney-General of St. Christopher v*

Reynolds (1970) 3 All E.R. 129 at pp. 139-140 per Lord Salmon).

The other issue which was before this Court was - were the procedures for the acquisition of portions of the Beausejour Estate carried out by the authorised officer? The learned Chief Justice has dealt with this issue in his judgment which has just been delivered, and with which I agree. I also agree with the order for costs made by him.



N.J.O. LIVERPOOL,
Justice of Appeal