010 (11)

DOMINICA

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 9 of 1989

BETWEEN:

RANDOLPH WILLIAMS
(Executor to the Estate of
Edwin Williams, deceased) - Appellant

and

THE AUTHORISED OFFICER - Respondent

Before: The Honourable Sir Lascelles Robotham - Chief Justice
The Honourable Mr. Justice Moe
The Honourable Mr. Justice Byron (Acting)

Appearances: Dr. R.L. Williams for the Appellant
Alick Lawrence for the Respondent

1990; Sept. 17,
1991; Apr. 29.

JUDGMENT

MOE, J.A.

This is an appeal against an award of compensation made by the Board of Assessment for the compulsory acquisition of 19.05 acres of land situate at Anse Cola, Colihaut, formerly owned by Edwin Williams now deceased.

The land concerned was operated as a quarry in 1984 and was compulsorily acquired by the Government onthe 9th April, 1987 under the Land Acquisition Ordinance, Cap. 170. Theowner of the land claimed compensation in the sum of $59,000.00. No agreement was reached between the Government and Mr. Williams on the compensation to be paid and a Board of Assessment was appointed to determine the amount.

The claim for compensation as presented before the Board may be conveniently considered and was dealt with by the Board under four heads, namely:-

(i) Value for materials from the quarry
(ii) Value of the land
(iii) Severance and injurious affection
(iv) Specific economic losses

/The Board.....

The Board rejected the claims for severance and injurious affection and economic losses and fixed compensation as follows:-

For material already quarried	-	$25,855.00
For material to be quarried	-	$26,185.00
For land 7.855 acres at $100.00	-	$ 785.50
For land 11.170 acres at $800.00	-	$ 5,585.00
		$58,410.50

There is no challenge to the per acre value of the land.

Inadequacy of Award

The appellant's first complaint is that the Board incorrectly calculated the amount to be awarded for materials to be quarried from the land in that it used an incorrect multiplier in arriving at the figure allowed. Whereas the Board applied a multiplier of .35, the appellant submitted that the Board ought to have applied a multiplier of .59 and arrive at an amount of $43,861. He referred to the evidence of Mr. Wear whose report on and valuation of the land concerned was presented to the Board.

It must be stated immediately that two other valuation reports were also tendered in evidence. One by Mr. Munro, also on behalf of the appellant/claimant and the other by the Authorised Officer himself. Before the Board, the Authorised Officer agreed with Mr. Munro's valuation for all material to be extracted and the Board accepted Mr. Munro's valuation of $26,185.00. The Board was clearly entitled to do so. A Board such as this relies on evidence and there being clear evidence on which the Board acted, evidence which the appellant himself put up for considertion, I can see no justification for this Court to interfere.

The second complaint of the appellant is that the Board incorrectly calculated the amount to be awarded for material already extracted. Whereas the Board applied to a total value of $37,170.00 given by Mr. Munro a discount factor of .6956 arriving at $25,855.00 the appellant submits the Board ought to have applied the discount factor to only 30% of the total value. He relied on the evidence of Mr. Trotter, a civil engineer, who said that of the material already won, about 30% would need to be further reduced in size if it was to be crushed in Dominica but that 70% would be available for crushing immediately.

In addition to the evidence of Mr. Trotter the Board also had evidence that the material would be invaluable for use as sea defences

/and that.....

and that it would take a few years for the material to be sold. The Board considered that the value given by Mr. Munro to the extracted material without a measure of discounting was too high. It therefore discounted the value given for 4 years at 9½% which gave the multiplier of .6956.

It appears then that the Board used a discount factor on the ground that the material would take a few years to be sold. Mr. Munro in arriving at his value did not discount. He said he assumed the material would be sold right away. This was based on the demand that exists for the material. The other valuer Mr. Wear also said that the entire amount of material could be used immediately without further reduction. But Mr. Wear used a discount factor, the basis for discountingbeing the time it would take for the material to be sold; he used a multiplier of .8573.

The Board was clearly left with a difficult decision to make when two witnesses of the claimant gave it two differing approaches for consideration. It was entitled to accept the evidence of one that a discount factor was to be applied. It also had to determine on the evidence what that discount factor would be. But it does not appear from the record why the Board used the multiplier which it applied and the factor used appears to be an arbitrary one. No satisfactory reason has been shown why, acting on the evidence of Mr. Wear that a discount factor was to be applied, the discount factor he put in evidence ought not also to be applied. For the factor used by the Board I would substitute the discount factor of .8573 and arrive at a figure of $31,855.84.

The appellant's third head of complaint was that the Board's decision against compensating the appellant for certain economic loss was unreasonable. The appellant claimed for loss of charcoal, fodder, Glori cida (fencing) poles, pool as a source of water for his remaining land and for recreation purposes.

The Board in its decision stated it "finds no evidence to support a claim for charcoal and gloricida poles....." This was surprising for in the preceding paragraph the Board itself stated "Evidence was given by Dr. Williams in support of his claim for charcoal, fodder, gloricida poles, loss of pool as a source of water......" Indeed in relation to the claim for the loss of income from glori cida trees and making of charcoal, the appellant also gave evidence of the annual value of loss sustained in the charcoal as $135.00 per annum on the fodder, an overall figure of $1400.00 and on the fence poles about $180 to $250 per annum. I do

/not find.....

not find that the appellant7s evidence in support of his claim was challenged or any evidence to the contrary was given. There seems no satisfactory reason for not allowing his claim. Precise amounts were not worked out and the amount to be awarded would have to be a reasonable figure. I would allow $1,350 for the charcoal, $1400 for the fodder, $2,000 for the fence posts, giving a total $4,750 rounded off to $5,000 for economic loss.

The appellant also complained against the failure of the Board to award interest on the amount assessed. The respondent did not contest this point. Provision is made in section 21 of the Land Acquisition Act, Cap. 170 for the Board to add to the compensation interest at the rate of 6% per annum, calculated from the date upon which the Authorised Officer entered into possession of the land until the date of the payment of compensation. I would add interest at 6% to the amount of compensation awarded calculated from 9th April, 1987 until date of payment of the award.

In the result I would allow the appeal and vary the award of the Board of Assessment to read:-

For material already quarried	-	$31,865.84
For material to be quarried	-	$26,185.00
For land 7.855 acres @ $100	-	$ 785.50
For land 11.170 acres@ $500	-	$ 5,585.00
For certain economic losses	-	$ 5,000.00
		$69,421.34

And with interest thereon at 6% per annum from 9th April, 1987 until payment.

The appellant to have his costs here and before the Board of Assessment to be taxed if not agreed.

G.C.R. MOE,
Justice of Appeal

L.L. ROBOTHAM,
Chief Justice

C.M.D. BYRON,
Justice of Appeal (Acting)