

SAINT VINCENT AND THE GRENADINES

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

(CIVIL)

CLAIM NO 425 OF 2003

**In the Matter of the Constitution of Saint Vincent and the
Grenadines**

AND

**In the Matter of an Application by Randolph Trueman Toussaint
for Redress Pursuant to Section 16 of the said Constitution for
Contravention of Sections 6,9,10 and 13 thereof in relation to him**

BETWEEN:

RANDOLPH TRUEMAN TOUSSAINT

Claimant

AND

**THE ATTORNEY GENERAL OF SAINT VINCENT
AND THE GRENADINES**

Defendant

Appearances

Mr. Ramesh Lawrence Maharaj SC, with him Dr Godwin Friday
and Ms Mira Commissiong for the Claimant

Mr. Anthony Astaphan SC, with him Mr. Richard Williams, Mr. Kesron Walters
and Ms Karen Duncan for the Defendant

.....
2014: October 6; 2015: March 3
.....

JUDGMENT

INTRODUCTORY

- [1] LANNIS, J [Ag]: This is a serious case. At issue is, what was the true reason for the compulsory acquisition, in the year 2002, after a change of government, of 12, 957 sq ft. of land in Canouan, in the State of St Vincent and the Grenadines, owned by the Claimant, Randolph Trueman Toussaint (Mr. Toussaint), former Commissioner of Police of the Royal Saint Vincent and the Grenadines Police Force. What is also at issue in this claim is whether Mr. Toussaint, in addition to being entitled to be compensated for his land, is entitled to exemplary and or aggravated damages, and additional damages under section 16 of the Constitution of Saint Vincent and the Grenadines.

CHRONOLOGY AND RELEVANT FACTUAL BACKGROUND

- [2] This matter has been afoot for over twelve years. This present proceeding - the determination of the substantive issues in the case, in which the Court's constitutional protection jurisdiction is invoked, is just one of other proceedings amongst the parties in this matter. Therefore, it is perhaps not necessary to restate, in its entirety the chronology of events or to **give** a detailed exposition of the facts, as they have already been detailed in several decisions in this matter including, (a) a decision of Blenman J dated 25th May 2004: (b) a decision of the Court of Appeal of the Eastern Caribbean Supreme Court dated 14th March 2005, and (c) a decision of Her Majesty's Privy Council dated 16th July 2007. Nevertheless, I think it is necessary to refer, in some detail, to the facts to gain an appreciation of the history of the case, and to highlight certain events which have marked, and or delayed the progress of the matter through the system.
- [3] I glean from the court record (including facts agreed or not disputed) that in 1990 Mr. Toussaint bought 12, 957 sq. ft. of land situate in Canouan in the Grenadines, from the Government of Saint Vincent and the Grenadines, through the Development Corporation. The purchase price was \$6,478.50. The Deed of Conveyance ¹ to Mr. Toussaint contained, in its second schedule, a number of restrictive covenants:
- "(a) No resale of the ... hereditaments will be permitted without The Development Corporation's Agreement.
 - (b) The ... hereditaments must be developed within a reasonable THREE (3) year period from the date of this Conveyance;

¹ Bearing Registration Number 3162 of 1990

- (c) Failure to develop the ... hereditaments within a THREE (3) year period without the Development Corporation's Agreement, will mean that the ... hereditaments will revert to The Development Corporation at the original price.
- (d) No structure must be erected on the ... hereditaments without the approval of the Physical Planning Authority of Saint Vincent."

[4] However, by letter dated 3rd March 1993 to Mr. Claude Leach, the Manager of the Development Corporation, Mr. Toussaint sought and obtained an extension of three years to comply with the restrictions. By further letter dated 23rd April 1996, addressed to the Chairman of The Development Corporation, Mr. Toussaint sought and obtained a "waiver" from the restrictions in respect of the covenant to develop. Significantly, by an Indenture dated 5th March 1996 ² Mr. Toussaint was released from the performance of all the restrictions and stipulations contained in the previous Indenture issued to him in 1990.

Change in Government

[5] There was a change in Government on 20th March 2001. The New Democratic Party (NDP) headed by Sir James Mitchell, lost the General Elections to the United Labour Party (ULP) headed by Dr Ralph Gonsalves who became the Prime Minister. Following the change in Government, the Attorney General, by letter dated 26th March 2002, wrote to Mr. Toussaint asserting, among other things that the land was sold to him at a low price which did not reflect its fair market value, because of his (Mr. Toussaint's) close relationship with the previous Government. The Attorney General went on to express the view that the "the entire process was patently wrong" and thus, the Attorney General required Mr. Toussaint to pay the purported shortfall of \$84,220.50 plus \$4,534.95 stamp duty. Mr Toussaint did not reply to that letter; so the Attorney General wrote to him again on 9th May 2002 giving him the opportunity to return the subject land to the State and be refunded the purchase price which he paid. Again, there was no reply from Mr. Toussaint. He seemed to have been engaged in reselling the land, and in fact entered into an agreement with one, Michael Bowman (Mr. Bowman) to resell the land to him for \$268,820.000. In furtherance of this agreement, Mr. Toussaint caused the requisite Deed of Conveyance from him to Mr Bowman to be prepared, and it was sent to the Valuation Department for the purpose of obtaining a certificate of valuation to facilitate payment of the requisite stamp duty and eventual registration of the Deed of Conveyance. But the Valuation Department kept the Deed and refused or failed to return it.

Sitting of the House of Assembly: Budget Debate; Declaration

[6] On the 5th December 2002, there was a sitting of the House of Assembly. The budget debate was in progress. The Prime Minister was on his feet.. During the course of his debate presentation, the Prime Minister made a statement to the effect that the sale of the land to Mr.

² Bearing Registration Number 591 of 2000

Toussaint was an "injustice" and or a "scandal" which required the Government and Cabinet to act with dispatch to correct it, and not to allow this "injustice" - this "scandal" to be perpetrated. To that end, the Cabinet, on the same day, caused the issue and publication of a declaration in an Extraordinary issue of the Government Gazette. The Prime Minister recited the wording of the Draft declaration which, in its relevant parts, follows:

"... Whereas it is enacted by Section 3 of the Land Acquisition Ordinance, 1946, that if the Governor General considers, that any land be acquired for a public purpose, he may cause a declaration for that purpose to be made. And Whereas it is considered by the Governor General that the undermentioned parcel of land should be acquired for a public purpose to wit, a Learning Resource Centre, for the people of Canouan; Now it is hereby declared by His Excellency the Governor General acting in accordance with the advice of the Cabinet ... that upon the second publication of this declaration in the Gazette, all that parcel of land at Canouan in the Parish of the Grenadines, adjoining to Randolph Toussaint and measuring 12,957sq. ft. ... shall vest absolutely in the Crown."

- [7] After his recitation of the words in the declaration, the Prime Minister concluded, " We have acted. Whoever ... individual think that he possesses a right, there is always the law courts; but we cannot sit idly by. ..."

\$9,717.80 deposited at Treasury

- [8] Although the declaration said nothing about compensation, the Land and Surveys Department, on 12th March 2003, wrote to Mr. Toussaint telling him that \$9,717.80 had been deposited at the Treasury Department in his name, being "payment (plus interest at the rate of 5% over a period of ten years)" for the land that he acquired in 1990. It will be readily apparent from the foregoing, that the compulsory acquisition purportedly effected, was not at the alleged market value, but at the original price of \$6,478.50 plus 5% per annum simple interest. It will also be readily apparent that the proper procedures for determining the value of the land were not followed in that, no authorised officer was appointed to give the requisite notice; there was no attempt to negotiate the purchase by voluntary agreement with Mr Toussaint³; no Board of Assessment was appointed to assess the compensation payable to Mr Toussaint in accordance with the Land Acquisition Ordinance. There was no invitation to Mr Toussaint to nominate a member of the Board; and no valuation report was produced.

Commencement of legal proceedings

- [9] Mr Toussaint was aggrieved at the acquisition of his land. He was not convinced that the acquisition of his land was for a permissible public purpose. Indeed, he believed he possessed rights - basic and constitutional rights; so he did not sit idly by; he resorted to the court to

³ The only indication of an offer was the letter dated 12th March 2003 - three months after the publication of the Gazette, telling him that \$9,717.80 is waiting for him to claim at the Treasury.

challenge the decision of the Government to compulsorily acquire his land "unlawfully" - "without adequate compensation", "in a reasonable time", and allegedly "without a valid reason".

- [10] On 6th October 2003, Mr. Toussaint commenced proceedings against the Attorney General by way of a Fixed Date Claim Form for constitutional relief. He alleged that the Prime Minister's statement during the budget debate on 5th December 2002 shows the true reasons for the acquisition of his land. Further, he alleged that the reasons were political. Furthermore, he alleged that the public purpose of a Learning Resource Centre alleged in the declaration was "a sham and a stratagem to deprive him of his land unlawfully". He claimed various declarations pursuant to the extensive enforcement and remedial armoury available under section 16 of the Constitution. And he claimed damages, including exemplary and aggravated damages. The Fixed Date Claim was supported by the Affidavit of Mr. Toussaint setting out the facts on which he intended to rely to support his claim. To that Affidavit were exhibited fourteen documents: "RT 1" to "RT 14". Of particular interest was Exhibit "RT 11". Exhibit "RT 11" was captioned "Transcript of part of speech by the Hon. Ralph Gonsalves, Prime Minister of St Vincent and the Grenadines, in the House of Assembly of St Vincent and the Grenadines on 5th December 2002." That Exhibit was short-lived by virtue of the outcome of interlocutory proceedings; but it was effectively restored to life in full form in further interlocutory proceedings.

Application to strike

- [11] By application dated 14th November 2003, as amended, the Attorney General applied for an order striking out certain paragraphs of Mr. Toussaint's claim and his Affidavit in support, together with Exhibit "RT 11". The application came before Her Ladyship Mme Justice Louise Blenman (as she then was), on 23rd March 2004.
- [12] On 25th May 2004, Justice Blenman delivered a written decision wherein the learned Judge struck out certain paragraphs of the Claim, and portions of the supporting Affidavit. Exhibit "RT11" was struck out in its entirety. The learned Judge went on to give directions for the trial of the matter, fixing the trial for the 4th and the 5th October 2004. Those trial dates were destined to be vacated once Mr Toussaint chose to exhaust all of his rights of access to Higher Courts, that he possessed.

Appeals to the Court of Appeal and to the Privy Council

- [13] Being aggrieved by the decision of Justice Blenman, Mr. Toussaint appealed to the Court of Appeal. The Court of Appeal allowed the appeal, but did so on a limited basis, holding that no permission having been given by the Speaker of the House of Assembly for the use in court of the statement which Mr. Toussaint was seeking to rely on, the statement was inadmissible under s. 16 of the House of Assembly (Privileges, Immunities and Powers) Act 1966. The Court of Appeal also held that if and when the debate and proceedings of 5th December 2002 are printed by the

Government Printer, they would become admissible in that form under s. 40 of the Evidence Act 1988.

[14] Mr Toussaint appealed to the Privy Council.

[15] On 16th July 2007, the Privy Council delivered its decision, allowing the appeal, and awarding costs against the Attorney General at the Privy Council, in the Court of Appeal, and in the High Court. Three critical passages of the opinion of the Board are contained in paragraphs 1, 34 and 35 where Lord Mance, in delivering the opinion of the Board said:

"1. "The appeal to the Board raises questions about the use in support of a claim for constitutional relief of a ministerial statement made in the House of Assembly. It also raises an issue about costs under Part 56.13 (6) of the Eastern Caribbean Civil Procedure Rules 2000 which applies to administrative law proceedings."

"34. On the facts of the present case, the Board is satisfied that Mr. Toussaint's right of access to the court for constitutional relief would be unduly and effectively undermined, if he were not able to rely upon the Prime Minister's statement in the budget debate on 5th December 2002. S. 16 must be read subject to the modification, adaptation or qualification necessary to enable evidence relating to such a statement to be admissible, where necessary, as in this case, to explain executive action and to enable its judicial review."

"35. The Board will therefore advise Her Majesty that the appeal should be allowed and that the Prime Minister's statement made in the House of Assembly during the budget debate on 5th December 2002 is admissible in evidence in support of the appellant's claim in these proceedings, notwithstanding s.16 of the House of Assembly (Privileges, Immunities and Powers) Act 1966."

[16] Although the decision of the Privy Council was delivered since the year 2007, the trial of the substantive matter was punctuated by inordinate delay, apparently brought about by certain actions and or inactions on the part of both parties and the court office.

Inordinate delay and re-listing of the Matter

[17] It would appear that after the delivery of the decision of the Privy Council in 2007, the substantive matter fell into abeyance and was only revived in 2014 - almost three years after the Learning Resource Centre was officially opened in Canouan on the lands compulsorily acquired by the Government. Evidently, while the case was lingering in the court system - while the substantive

matter was pending before the court to determine the legality of Government's actions, the Government proceeded to start construction of the Learning Resource Centre.⁴

Status Hearing and Directions for Trial

[18] On 9th April 2014, almost seven years after the delivery of the decision of the Privy Council, and after several written requests for the matter to be relisted for directions for trial, the matter came before Justice Cynthia Combie-Matyr [Ag] for status hearing.⁵ After hearing Counsel for the parties, Justice Combie-Matyr made an order in the following terms:

- "1. Leave is granted to the Claimant to amend the Statement of Claim by the 17th day of April 2014 if necessary."
- "2. On or before the 14th day of April 2014, the Claimant shall file a supplement affidavit exhibiting the certified transcript from the recording of the Prime Minister's statements in the Budget Debate in the Parliament of Saint Vincent and the Grenadines on the 5th day of December 2002 obtained from the Clerk of the House of Assembly. Mr Richard Williams or Mr. Graham Bollers and Dr Godwin Friday are jointly responsible for obtaining the certified transcript from the Clerk of the House of Assembly."
- "3. On or before the 28th day of April 2014, the Defendant shall file and serve the Acknowledgement of Service Form and all affidavit evidence in response to the Claimant's affidavits filed on 7th October 2003 and Supplement Affidavit filed on or before the 16th day of May 2012."
- "4. The Claimant has leave to file and serve an affidavit in response to the Defendant's affidavit evidence on or before the 8th day of May 2014."
- "5. Both parties to file and serve any documents not already disclosed on or before the 8th day of May 2014."
- "6. All affidavits and supplemental affidavits filed and served herein will be admitted as evidence at trial and stand as evidence in chief."
- "7. On or before the 14th day of May 2014, the Claimant's Counsel shall file and serve a trial bundle which must include all pleadings, affidavits, relevant orders, supplemental affidavits and all other relevant documents to be relied on at trial."

⁴ Construction began in August 2009 and completed in October 2011.

⁵ Mr. Bertram Commissiong, QC, and with him, Mr. Godwin Friday, Ms Nicole Sylvester and Ms Mira Commissiong appeared for Mr. Toussaint. Mr. Graham Bollers and Mr. Richard Williams appeared for the Attorney General.

- "8. Skeleton arguments, summaries of legal proposition to be relied on at trial along with legal authorities are to be filed and exchanged by the parties on or before the 15th day of May 2014."
- "9. Either side shall be at liberty to apply to vary this order on or before the 30th day of June 2014."
- "10. Pre-trial Review and Report shall take place on the 16th day of July 2014."
- "11. The trial date is fixed for the 6th and 7th days of October 2014."
- "12. The Claimant has carriage of this Order."

[19] The parties did not comply strictly with the stipulated timelines. However, Mr Toussaint sought and obtained an order extending the time within which to comply with the order requiring him to file on or before the 14th day of April 2014, a supplemental affidavit exhibiting the certified Transcript from the recording of the Prime Minister's statements in the Budget Debate in the Parliament on the 5th day of December 2002. On the 6th October 2014, the matter eventually came up before me for trial of the substantive matter. Both parties filed written submissions, and these were augmented by oral arguments./submissions.

[20] That was the factual background and chronology of the main events that marked the movement of the matter through the court system before and after the decision of the Privy Council on a preliminary issue in this case. Against that background, I turn to look at the issues arising for determination.

THE ISSUES

[21] In paragraph [1] of this judgment, I set out what I consider to be the main issues in the case. It bears noting, however, that Mr Astaphan S.C. in his written submissions, has identified the issues as being: 1) Whether Mr Toussaint is entitled to compensation for his land; 2) Whether the intention of the Government as declared in the words of the Prime Minister in the House of Assembly was to acquire Mr Toussaint's land because of political affiliations, or to remedy what the Government perceived to be a scandalous wrong; and 3) Whether Mr Toussaint is entitled to damages inclusive of aggravated and or exemplary damages as alleged or at all.

It also bears noting that Mr Maharaj S.C. was of the view that at the core of the matter is the true reason for the acquisition, and that would impact on both the question of liability and the extent of redress.

For my part, the issues identified bear close similarity and are to the same effect. I will revert to them below. But I think it will be convenient, at this juncture to set out the legal framework governing this matter.

THE RELEVANT PROVISIONS OF THE CONSTITUTION

[22] Section 6 of the Constitution of St Vincent and the Grenadines, is captioned "Protection from deprivation of property." In so far as is relevant, s. 6 of the Constitution provides:

- (1) No property of any description shall be compulsorily taken possession of, and no interest or right over property ... shall be compulsorily acquired, except for a public purpose and except where provision is made by law applicable for the taking of possession or acquisition for the payment, within a reasonable time of adequate compensation.
- (2) Every person having an interest in or right over property that is compulsorily taken possession of ... shall have right of direct access to the High Court for-
 - (a) determining the nature and extent of that ...right;
 - (b) determining whether that taking of possession or acquisition was duly carried out in accordance with the law authorizing the taking of possession or acquisition;
 - (c) determining what compensation he is entitled to under the law applicable to that taking of possession or acquisition;
 - (d) obtaining that compensation

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) (b) or (c) of this subsection, the right of access shall be by way of appeal, exercisable as of right at the instance of the person having the ... right over the property from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter."

[23] From a reading of section 6, it seems clear that a compulsory acquisition of land is forbidden by the Constitution unless 1) it is for a public purpose; 2) it is done under a law authorizing the acquisition; 3) the law authorising the acquisition makes provision for the payment of adequate compensation within a reasonable time; and 4) the acquisition is duly carried out in accordance with that law.

[24] The law authorising compulsory acquisition of land is the Land Acquisition Act Cap 322.

THE LAND ACQUISITION ACT

- [25] Section 3 of the Land Acquisition Act, Cap 322 (the Act) confers powers of compulsory acquisition of land on the Governor-General (who acts on the advice of the Cabinet). Section 3 (1) of the Act provides that if the Governor-General considers that any land should be acquired for a public purpose, he may cause a declaration to that effect to be made in the manner provided by that section, and the declaration shall be conclusive evidence that the land to which it relates is required for a public purpose.
- [26] By section 3 (2) of the Act, " Every declaration shall be published in two ordinary issues of the Gazette" and that in the declaration, there shall be specified particulars relating to the land which is to be acquired including "the public purpose for which the land is to be required". (emphasis mine)
- [27] Section 3(3) provides that upon the second publication of the declaration in the Gazette the land shall vest absolutely in the Crown.
- [28] Section 4 of the Act creates an "authorized officer" who is defined by section 2 of the Act to mean "any person who may be appointed as such by the Governor-General for the purposes of the Act." Section 4 provides that if it appears to the Governor -General that any land is likely to be acquired for a public purpose and it is necessary to make a preliminary survey or investigation, he may cause a notification to that effect in the Gazette, and the authorised officer and his agents, assistants and workmen may enter the land and do certain specified acts, or such other acts as may be necessary for purposes of the preliminary survey or investigation, ultimately to facilitate acquisition of the land.
- [29] The authorized officer is empowered to negotiate with the land owner for the purchase of the land. Section 6 (1) of the Act provides that as soon as any declaration has been published in accordance with the provisions of section 3, the authorised officer shall, without delay, enter into negotiations for the purchase of the land with the owner of the land, upon such terms and conditions and by voluntary agreement.
- [30] The Act, by section 11 thereof, provides for "all questions and claims relating to the payment of compensation" to be submitted to a Board of Assessment made up of three members: a Judge of the High Court, as Chairman; a member appointed by the Governor-General and a member nominated by the owner of the land to be acquired. The Act also provides for an appeal against a decision of the Board of Assessment to the Court of Appeal.

THE EVIDENCE

- [31] The evidence to support Mr Toussaint's case is contained in his First Affidavit filed on the 7th October 2003, and the documents exhibited thereto; his second or supplemental affidavit filed on 16th August 2012, and the documents exhibited thereto; his third Affidavit filed on 16th July 2014

and the document exhibited thereto (The Transcript), and the affidavit of Ms Marlon Mills filed on the 6th September 2012.

- [32] The evidence to support the Attorney General's case is contained in the Affidavit of Mrs. Judith Jones-Morgan filed on 25th September 2014. None of the affiants was subject to cross-examination.

Prima facie, the evidence to support the Attorney General's case is also contained in the declarations published in the Gazette, because the Act says the declaration is to be regarded as 'conclusive evidence' that the land to which it relates is required for a public purpose.

The Evidence of Mr Randolph Toussaint

- [33] In his First Affidavit, Mr Toussaint sets out the facts pertaining to the subject land before and after its acquisition by Government. These facts I have already captured/summarised in the factual background above. No need for repetition. Suffice it to say that the Affidavit shows that the procedures for compulsory acquisition set forth under the Act were not fully complied with. In his second Affidavit, Mr Toussaint stated among other things: 1) that notwithstanding the reliefs claimed in the Fixed Date Claim, the Government caused to be constructed a building to house a Marine Resource Centre on the parcel of land which is the subject of these proceedings; 2) that there was a ceremony to commemorate the opening of the building, and that news of the opening was reported in the Searchlight Newspaper for Friday 14th October 2011; 3) that there are other parcels of land in the same area as his parcel, that are of the same quality and topography which the Government could have easily taken; 4) that there is nothing special about his parcel that made it particularly suitable as the site on which to construct the building; 5) that the Government constructed the building in total disregard of the pending proceedings.
- [34] Mr Toussaint concluded his Affidavit by urging the court to grant the relief sought in his claim; to set aside the acquisition and re-vest the land in his name. Alternatively, he stated that if such relief is not granted, he would be entitled to compensation on the basis of the open market value of the land, and to aggravated damages as well. Mr Toussaint stated that a recent sale of land in the same vicinity of his parcel of land, is good evidence of the open market value of his land. The Affidavit revealed that in May of 2012, there was a sale of two acres, three roods, and eighteen polls of land in the same vicinity as Mr Toussaint's parcel of land for a certified value of USD1,240,000.00 or EC\$3,280,000.00, being approximately (USD10.55 or EC\$27.90 per sq. ft.). Mr Toussaint produced a certified copy of the Deed in respect of that sale. Mr Toussaint deposed that at the time of the acquisition, his parcel of land was \$20.75 per sq. ft. and that since the acquisition, he has not been able to get any income from the said parcel of land. Nor has he been able to sell or to do any investment with it.
- [35] In his Third Affidavit, Mr Toussaint sets out the difficulties experienced in obtaining the Transcript of the Proceedings of the House of Assembly, so as to enable him to comply with the order of Justice Combie-Matyr requiring him to file a certified copy of the Transcript of the Proceedings on or before

14th April 2014. In the end, a copy of the Transcript was obtained. It is exhibited to his Third Affidavit as "RT 18"

The Evidence of Ms Marlon Mills

- [36] Ms Marlon Mills in her affidavit, described herself as an environmentalist, and an advocate for marine conservation and sustainable development. She stated that she visits the Grenadines Island often. She has particular interest in maintaining the delicate balance of the eco-system in the Tobago Cays and the barrier reef off the eastern coast of the island of Canouan and the Grenadines in general. As an environmentalist, and from her knowledge of Canouan, she is of the view that the Resource Centre would have been better served if it were located in Charlestown - the village where the local community resides; it would then have been easily accessible to the local community especially as it has been said by Government that the intention is to use it to hold classes and workshops directed at educating the populace and promoting greater knowledge and awareness of marine conservation. The Centre, she said, is isolated in an area where locals are not encouraged to visit or frequent; it being too close in proximity to the Development area. Her alternative and concluding statement was that there are much more empty lands of the same nature as Mr Toussaint's in the same area that could have been taken to build the Centre.

The Evidence of Mrs. Judith Jones-Morgan

- [37] Mrs. Jones-Morgan states that she is the Attorney General of the State of St Vincent and the Grenadines and a member of the Cabinet, and that she is the Defendant herein. Her Affidavit states that the ULP was elected to office in March 2001 and inherited an education system which required modernization. An assessment of the education system was conducted which revealed that the system was wholly inadequate and in need of near complete overhaul.
- [38] The Government therefore implemented 'the education revolution' which recognized inter alia, that:
1. Education is a fundamental human right and all citizens should be enabled to achieve basic required minimum standard.
 2. Education should not be limited to age, time and place, but should be a lifelong process which goes from beyond normal school.
 3. This 'revolution' started among other things a literacy crusade with its overarching purpose to "assist in the social economic development of St Vincent and the Grenadines by facilitating education and training of all citizens over the age of fifteen who are outside the formal system" by constructing and implementing Learning Resource Centres throughout the length and breadth of the State.
- [39] The Affidavit sets out the details pertaining to the two publications of the Extraordinary Gazettes acquiring Mr Toussaint's land. According to the Affidavit, by virtue of the second publication in the Gazette, on 10th December 2002, Mr Toussaint's land became vested in the Crown.

- [40] Mrs. Jones-Morgan further deposed that in accordance with the Government's policy, and in keeping with the public purpose as set out in the acquisition, the Government entered into a contract for the construction of the Learning Resource Centre on 1st March 2009 with CCA Limited for the Construction of the Canouan Learning Resource Centre on the lot of land formerly belonging to Mr Toussaint, at a cost of One Million Six Hundred and Ten Thousand Dollars (\$1,610,000.00).
- [41] The Affidavit further states that in October 2011, the Canouan Marine Learning Centre was completed and handed over to the Government in a ceremony held in Canouan. The affidavit informs that the Government constructed 5 Learning Resource Centres in 2003, with handing over of the said Centres taking place in 2004; that apart from the Canouan Learning Resource Centre, the Government has constructed 13 Learning Resource Centres in St Vincent and the Grenadines, making a total of 14 thus far completed. According to the Attorney General's affidavit, those Centres are located at Sandy Bay, South Rivers, Colonarie, North Union, Biabou, Evesham, Upper Cane Hall, Questelles, Layou, Barrouallie, Fitz Hughes, Chateau-Belair and Union Island.

PRELIMINARY REMARKS BY MR ASTAPHAN S.C.

- [42] As Mr. Maharaj S.C. was about to open his case, Mr Astaphan S.C. rose to make some preliminary remarks informing the court that "we agreed that Mr. Toussaint should have the value of his land assessed by this court, rather than have it sent back to the Tribunal." However, Mr. Astaphan S.C. expressed concern as to whether there is sufficient evidence before the court to make the assessment, or whether evidence would be required. Learned S.C. then went on to give a brief insight as to the Attorney General's position, referring to the Privy Council's opinion that it is a matter for this Court to determine objectively the words of the Prime Minister - whether they were political victimization, or whether they were merely to set aside a scandalous transaction. Mr Astaphan S.C. then proceeded to discuss how either position may impact the assessment of damages. In that connection, Mr Astaphan S.C. indicated that the Attorney General's position is that if the statement made by the Prime Minister is found to have been political, then Mr Toussaint will be entitled to compensation, and the constitutional rights and remedies will come into play. But if in fact it is found that the words were merely to set aside a scandalous transaction, then that should not give rise to a claim for aggravated or exemplary damages. In answer to a question posed by the court, Senior Counsel indicated that he was not interested in cross-examining any of the affiants, adding that after Mr Maharaj S.C. is finished with his response, he will merely add a few more words to what he has said on the very narrow issues that he has indicated to the court.

MR. MAHARAJ S.C. 's RESPONSE TO MR. ASTAPHAN S.C.'s PRELIMINARY REMARKS

- [43] Mr Maharaj S.C. in response to Mr. Astaphan S.C.'s preliminary remarks said that he was grateful for Mr Astaphan S.C.'s concession. However, Mr Maharaj S.C. stated that although there is a concession (to a certain extent), in respect of compensation, Mr Toussaint's contention is that his case is a case for redress under the Constitution, and the redress is not limited to compensation for the land, but there are other factors which the court will have to look at as a whole in order to determine whether there should be restitutionary damages, and whether there would be also vindictory damages or aggravated damages and damages for distress.
- [44] In respect of the second point raised by Mr Astaphan S.C., Mr Maharaj SC, while agreeing that the court has to make an objective determination as to the basis of the statement made by the Prime Minister, stated "we are not relying on the political aspect ... as presently pleaded." Senior Counsel stated that the Claimant is contending that the motivation for the acquisition was the second limb, i.e. to reverse the scandal and or injustice of the sale of land to Mr. Toussaint. Mr. Maharaj S.C. further responded by saying that for the purposes of this case, it really does not matter whether it is political or non-political. As far as Mr Maharaj S.C. was concerned, whether the purpose was political or not, the purpose would still be unlawful and Mr. Toussaint would still be entitled to redress. To develop that point, Mr. Maharaj S.C. cited relevant passages in the decision of the Privy Council on the point.. Like Mr Astaphan S.C., Mr Maharaj S.C. indicated that he was not interested in cross examining anyone. Mr Maharaj S.C. then went on to make his substantive submissions.

THE SUBSTANTIVE SUBMISSIONS ON BEHALF OF MR TOUSSAINT

- [45] Mr Maharaj S.C. commenced his substantive submissions by referring to certain paragraphs of the Privy Council's decision on the preliminary issue in this matter that came before it in 2007. First, learned S.C. pointed to paragraph 6, which he read and went on to point out that there were two limbs to Mr. Toussaint's claim: 1) that the Prime Minister's statement shows the true reasons for the acquisition and these were political; and 2) that the public purpose of a Learning Resource Centre alleged in the declaration was a stratagem to deprive Mr Toussaint of his land unlawfully. Reference was also made to paragraph 20, where the Privy Council noted that one observation of the statement is that the actual motivation of the executive advise to the Governor General was not political, but to reverse what the new Government perceived as a scandal or injustice involving the purchase at an undervalue, of state's assets by a close friend and confidante of the previous Prime Minister.
- [46] At paragraph 4 of his written skeleton submissions, Mr Maharaj S.C. contends that the purported acquisition was unconstitutional and unlawful, and he sets out, under four heads, the grounds for so contending:
- (1) The Government acted in breach of s. 6 (1) of the Constitution because it did not carry out the acquisition in accordance with the applicable law. The provisions of

the Act governing the payment of adequate compensation were not followed. That failure was deliberate because the clear, express purpose of the Government in acting as it did was to ensure that the Claimant did not receive the market value of the land.

- (2) The Government acted in breach of s.6 (2) of the Constitution, because by refusing to engage the provisions of the Act, it denied the Claimant his right of access to a Board of Assessment, and thence to the Court of Appeal, for determining the compensation to be paid to him.
- (3) The Government acted in breach of s.6 (1) of the Constitution, because the acquisition was not for a permissible purpose; the true purpose was to take back the Claimant's land, on the basis that he wrongly acquired it at a discounted price by virtue of his close relationship with the former administration. It is unconstitutional for the executive to purport to exercise a power to confiscate property to correct an alleged injustice or to punish a perceived unlawful act. It offends the fundamental principles of the separation of powers, the rule of law, and equality before the law.
- (4) The Government acted in breach of the applicable law, and hence, in breach of s.6 (1) of the Constitution for the further reason that the true purpose of the acquisition was not that stated in the publications in the Gazette. The publications were a sham, and accordingly were unlawful.

[47] Mr Maharaj S.C. in his written submissions and in his oral arguments elaborated on, and amplified each of those grounds. The written elaborations are lengthy, consisting of 52 paragraphs spanning some 19 pages. It will be convenient to summarize and highlight some of the salient parts of the discourse:

A. Effects of Failure to Observe the Act

1. The reason for failure of the Government to follow the statutory requirements laid down in the Act were deliberate. The Government express intent was to deny the claimant the true value of the land.
2. The Prime Minister explained the Government's intent in respect of the parcel of land to Parliament on 5th December 2002; the true intent was to prevent the Claimant from "profiting unjustly from the assets of the people of St Vincent and the Grenadines". The Claimant had bought the land in 1990 for \$6,478.50 and now in 2002 was about to sell it for \$268,820.00. The government had acted to prevent this "injustice" by acquiring the land; that was the stated intent for the acquisition as given by the Prime Minister who is head of the Cabinet.

3. By the express words of the Prime Minister, the Government clearly had no intent to pay the Claimant adequate compensation for the land, which would have resulted in an award of compensation with the market value. The Government was instead acting with the express intent of preventing the Claimant from obtaining the market value for the parcel of land. As was the express intent, so was the express offer of payment; the offer was to give the Claimant only the price he had paid for the land in 1990, plus simple interest of five percent per annum for ten years.
4. The failure to appoint an authorised officer or a Board of Assessment meant that no mechanism was put in place for determining the amount of compensation payable to the Claimant. No award of compensation was made under section 17 of the Act ; no award having been made under section 17, no appeal under section 17 (3) could be made to the Court of Appeal. it follows that the Claimant's constitutional right of access to the Court under section 6 (2) (c) of the Constitution was infringed, namely, his right of appeal from the Board of Assessment for the determination of the compensation to be paid to him.

B. Acquisition was not for a permissible public purpose

5. The acquisition was not for a permissible public purpose. The Prime Minister in his statement to Parliament revealed the true purpose behind the acquisition of the Claimant's land: He said: 1) The Government was acting to address "... an attempt of certain persons who would want to profit from the assets of the people of St Vincent and the Grenadines."; 2) The Claimant a close friend of the then Prime Minister and confidante of the NDP leadership had acquired the land for only 50 cents a square foot; 3) He had later been released from all the restrictive covenants; 4) He was now looking to sell the land for \$268,820.00; 5) The Government had to act with dispatch, speed and focus, so as " ... not to allow this injustice to be perpetrated, this scandal." ; 6) Accordingly, the Cabinet had decided to publish the declaration of acquisition in an Extraordinary Gazette that day. The Prime Minister's statement to Parliament is , clearly the Government's explanation of its purpose for the acquisition of the Claimant's land.
6. It is plain that the creation of a Learning Resource Centre for the island of Canouan was not the operative purpose for the Government acquiring the land. That was not the operative purpose which the Prime Minister stated in the Parliament for the Government to acquire the land. It is clear that the Government acquired the land to redress what it said was a scandal.
7. Neither the Prime Minister nor the Government have sought to disassociate themselves from the explanation given by the Prime Minister. The Prime Minister

has not sworn to any affidavit to disassociate himself from that explanation. The Attorney General in her Affidavit has not disassociated the Government from that explanation given by the Prime Minister. If they did, (or if the court in these proceedings did) that would be to challenge what was said in Parliament.. As the Privy Council noted at paragraph 23 of its decision, "If the Prime Minister were to suggest that he expressed himself incorrectly, and did not intend to say what he said, then it would not be Mr Toussaint who was questioning or challenging what was said to the House."

8. In the light of the Prime Minister's clear words, the fact that the land is now the site of the Marine Resource Centre is irrelevant to the legal question of the true purpose for its acquisition. The relevant date for determining the true purpose of the land acquisition and the validity of its proceedings is the date on which the Government made the declaration. That in law is the operative date.
9. The fact that Government said it would build a Resource centre and went ahead and built it, does not make the Resource Centre the true purpose of the acquisition. The building of the Resource Centre was a convenient 'public purpose' cloak or mechanism for the real purpose of taking back the land from the Claimant. This was a colourable exercise of power to acquire the land for a purpose which resulted in the unconstitutional deprivation of the Claimant's property.
10. A Government in law cannot by a colourable exercise of power to acquire lands for a public purpose, and then build a Learning Resource Centre and by building it and using it for a public purpose, justify in law the unlawful and unconstitutional acquisition.
11. The Prime Minister's clear words in the Parliament could not in law amount to a permissible public purpose even if, as the Prime Minister said, the Government was convinced of the necessity to act to prevent people from unjustly profiting from public assets.
12. If the Government was of the view that there was something improper or unlawful in the Claimant's purchase of the land, there were proper legal routes available under the laws of St Vincent and the Grenadines to redress the unlawfulness or impropriety.
13. The Government chose a route which avoided all the inconveniences imposed by the rule of law and the rules of natural justice, such as the need to state a case to the person accused so that he might answer; and the need for an impartial judicial determination based on the evidence in accordance with the existing law and legal procedures applicable to all citizens. In effect, the government was purporting to

exercise a power to undo an apparently lawful transaction on the ground that it was improper; or to confiscate the Claimant's property because it felt that he had obtained it improperly. In so doing, the executive arm was usurping the powers of the judicial arm of the State, that is, it was carrying out an executive judgment. Furthermore, the Government was purporting to decide its own case, for itself; and it was denying the claimant the protections that would be afforded to him, and every citizen if a claim had been brought against him for appropriate legal determination. It was therefore acting in breach of the rules of natural justice, the rule of law, and the principle of equality before the law.

14. Even if the Court were to find that the Government acted in part out of a genuine desire to build a Resource Centre as well as because it wanted to take back the land from the Claimant, that would not make the Government's purpose lawful. (**R v Inner London Education Authority ex p Westminster** ⁶ ; and **R v Lewisham ex p Shell** ⁷ relied on).
15. The Government will seek to rely on section 3 (1) of the Act which provides that the Governor-General's declaration "shall be conclusive evidence" that the land is required for a public purpose. However, in the circumstances of this case, that is not a defence because the rebuttable presumption is rebutted by the statements of the Prime Minister, and the unlawful and unconstitutional actions in relation to the acquisition of the land previously referred to.
16. In any event, section 3(1) of the Act must be read in light of the Constitution of St Vincent and the Grenadines which is the supreme law. Section 101 states in part "... if any other law is inconsistent with this Constitution, this Constitution shall prevail and the other law shall to the extent of the inconsistency, be void." Additionally, by virtue of paragraph 2 of Schedule 2 of the Constitution, existing laws are to be construed with such modification as may be necessary to bring them into conformity with the Constitution.
17. The Court of Appeal in the Bahamas case of **Bethel v AG**⁸, considered comparable provisions and held that the Notice of Intending Acquisition is 'conclusive evidence' but must be construed as a rebuttable presumption in light of the provisions of Article 27 (1) (c) (ii) and (d).

⁶ [1986] QB WLR 28 at 49

⁷ [1990] Pens. LR 241 at paragraphs 63 and 66

⁸ 77 WIR 1

C. Unlawful notice because the true purpose of the acquisition was not stated in the publications of the Gazette

18. Based on the reasons set out above, the true purpose of the acquisition of the Claimant's land was given by the Prime Minister to Parliament on 5th December 2002. It follows that the true purpose of the acquisition was not stated in the publications in the Gazette. The publications in the Gazette stated a different purpose. Therefore, that makes the publications a sham and the stated purpose a stratagem. It is not lawful for the Government to act for one purpose but state another. For that reason the acquisition was in breach of section 6 of the Constitution because it was not lawfully carried out.

D. Redress on a restitutionary basis and not mere compensatory basis and also to include an additional award of vindicatory damages, aggravated damages and compensation.

19. The Claimant originally sought the return of the land to him. But in the teeth of his claim, the government went ahead and built on the land it had unlawfully acquired. In the circumstances, the Claimant does not seek the return of the land, which would not be reasonably practicable, but he is entitled to compensation. The ordinary measure of loss would take into account the fact that he was about to sell the land for \$268, 820.00. The compensation would be that price plus interest. Interest should be calculated on a compound basis, properly to reflect the Claimant's loss.
20. However, the measure of compensation would appear to result in a lower award than the present value of the land. The Claimant deposed that as at present rates of 27.90 per square foot, his land is worth \$361,779.30 (27.0 x 12,967). The Government should not be entitled to keep the profits.
21. The power given to the court under section 16 of the Constitution to award whatever redress it considers appropriate to secure the enforcement of fundamental rights, permits it to order redress on a restitutionary, as opposed to purely compensatory, basis. (**Merson v Cartwright**⁹; **Ramnaroop v AG**¹⁰ and **Ramnarine Jorsingh v Attorney General**¹¹ relied on).
22. The court ought to award a sum in redress to reflect the present value of the land so that the Government would be required to disgorge the profits of its wrongdoing. The Government acted in breach of the law and the Claimant's fundamental rights and thus it would be wrong if the Government were to keep the

⁹ [2005] UKPC 38 at para 18

¹⁰ [2006] 1 AC 328

¹¹ (1997) 52 WIR 501 at 505

profits of doing so. To allow Government to keep the profits would not sufficiently enforce or vindicate the importance of fundamental rights and the rule of law.

23. This is a case for an additional award of vindicatory damages pursuant to the jurisdiction identified in **Ramnaroop's** case. In addition, there are aggravating circumstances requiring an award of aggravated damages because 1) the Government dealt with the Claimant in a high handed fashion and refused to engage any proper procedures; 2) The Government accused the Claimant (by implication) of corruption and simultaneously pronounced sentence on him without giving him a chance to answer any case against him; 3) Despite his claim for the return of the land, the Government, some seven years after the acquisition, and six years after the issue of proceedings, went ahead and built on the Claimant's land, making a reversal of the acquisition impractical.
24. The Claimant is also entitled to compensation for distress, the sense of wrong and the inconvenience caused by the government's actions and his need to litigate to correct them, (**Romauld James v AG**¹² relied on) .

MR ASTAPHAN S.C.'s SUBMISSIONS

[48] Mr Astaphan S.C. grounded his written and oral submissions on the following points, some of which he had earlier mentioned in his preliminary remarks. They can be summarised thus

1. The Claimant is entitled to be paid for the lands acquired by the Government. The question is whether the issue of compensation ought to be determined by the High Court or referred to the Tribunal.
2. It is possible for the High Court to determine the question of compensation. However, this will require objective evidence of value. There is no or no sufficient evidence save for some vague references to other sales.
3. There is no evidence of the nature of the lands sold, the precise location of the lands, whether the lands were subdivided or developed or whether there is appropriate access roads, water, electricity etc; if the court is to decide the issue of compensation, the parties ought to be given an opportunity to adduce objective credible evidence of the matter of the value of the land
4. In order to make a determination of bad faith or breach of the Constitution as alleged, the High Court is required to determine objectively the meaning of the words used by the Prime Minister in the House of Assembly. The Prime Minister

¹² [2010] UKPC 23 at paragraph 27

admitted that the lands were acquired because of the political affiliation of the Claimant. However, as recognised by the Privy Council, this is not the only meaning.

5. Should the Court determine that the purpose of the acquisition was to remedy "a scandal", and not to victimize the Claimant, the purpose of the acquisition would not have been "political". Should the Court agree that the Prime Minister's statements that the acquisition was directed at a scandal, there would be no basis for finding that the Government acted in bad faith and contravened the constitutional provisions as alleged because the acquisition was not to victimize on political grounds.
6. The Prime Minister spoke of the Claimant's friendship and affiliation with the then Prime Minister, and said that this was the reason for the benefits acquired by the Claimant.. This was not denied. The Prime Minister also spoke of the unacceptable price paid by the Claimant, and the conditions for development which were imposed on sale. The conditions were arbitrarily removed prior to the election. The Attorney General wrote to the Claimant on the facts referred to by the Prime Minister and the Claimant did not reply. In the premises, it is fair to say that the Prime Minister and the Government's focus was on the scandalous arrangements and potential profits, and not on the Claimant's political affiliation.
7. In view of the undisputed facts mentioned by the Attorney General in her pre-acquisition letters, there ought to be no question that the Government was at liberty to seek redress from the High Court to set aside the transaction in view of the failure of the Claimant's failure to deny the charge.
8. There is a distinction between a decision premised on a person's political affiliation, and benefits acquired by him. The first may constitute bad faith, but the other does not. The latter may provide evidence on which the High Court may exercise its discretion not to award any substantial damages inclusive of aggravated damages because, if the Government is entitled to seek redress to correct a wrong, or set aside a transaction, uses an incorrect method or means, the action may be unlawful, but it does not amount to a contravention of the provisions of the Constitution or bad faith directed at the Claimant because of his politics.
9. The Resource Centre was in fact built..
10. The Affidavit of Ms Marlon Mills is of no probative value and is meaningless, because it merely suggests that there are other areas where the Resource Centre could have been built, with no description of location of these lands. It

does not present any facts to show that the land was not in fact suitable or that it was unsuitable for the location of the Resource Centre.

11. In the circumstances, damages for aggravated damages ought not to be awarded as claimed. The fact that the Government acquired the land rather than seek redress from the court may be unlawful; but unlawfulness does not amount to abuse of power, bad faith or discrimination on the grounds of the Claimant's political affiliation. Additionally, exemplary damages are not available as the motive must be financial. There is no evidence that the government acted out of any mercenary or financial motive.

[49] The submissions of both Senior Counsel are very impressive indeed.

DISCUSSION/AND DECISION

[50] There is no dispute that the Government of St Vincent and the Grenadines has a statutory power under the Land Acquisition Act, to compulsorily acquire land that is required for a public purpose. The Act sets out the process to be followed, and how compensation is to be determined. The case law establish that Compulsory acquisition is not only the power of Government to compulsorily acquire land; it is also the process by which the power is exercised. Therefore, attention to the procedures of compulsory acquisition is critical, if a Government's exercise of compulsory acquisition is to be efficient, fair and legitimate. Procedures should be transparent and undertaken in good faith. The purpose of the acquisition must be a permissible or lawful purpose. If the purpose was an impermissible purpose, and that impermissible purpose materially influenced the acquisition, the power to acquire has been invalidly exercised because irrelevant considerations have been take into account in exercising that power.

[51] Section 55 of the Constitution requires the Governor-General to act on the advice of the Cabinet. Therefore, it is under the advice of the Cabinet that the Governor-General published two declarations announcing the acquisition of Mr Toussaint's land, and the alleged purpose for which the land was required. Under section 3 (1) of the Act, the Governor-General's declaration is to be taken as "conclusive evidence" that the land is required for a public purpose. But that section is to be read in light of section 16 of the Constitution, and construed as raising only a rebuttable presumption.¹³ It does not mean that the decision to compulsorily acquire land for a public purpose is not open to challenge by the owner of the land. Indeed, it is well settled, and there is no dispute that the court has the power to determine the legality of the decision to acquire or the legality of the acquisition¹⁴. In the instant case, such determination is to be an objective one.

¹³ See *Bethel v the AG*, 77 WIR 1

¹⁴ See *HMB Holdings, Ltd v Cabinet of Antigua and Barbuda*[2007] UKPC 37

WHAT WAS THE TRUE REASON FOR THE COMPULSORY ACQUISITION OF MR TOUSSAINT'S LAND?

- [52] Mr Toussaint advanced a case based on two limbs: (i) that the purpose of the acquisition was to victimise him because of his political affiliation; and (ii) that the public purpose of a Learning Resource Centre alleged in the declaration was a sham and a stratagem to deprive him of his land unlawfully.
- [53] The political limb: As was previously indicated, very early in the course of argument, Mr Maharaj, S.C. informed the court that Mr Toussaint was not relying on, or pursuing the political limb of his case; so that aspect has effectively been withdrawn from the court's determination, leaving the second or non political limb for consideration. It is to be remembered that during the course of his response to Mr Maharaj S.C.'s substantive submissions, Mr Astaphan S.C. referred to the Privy Council's observation that one interpretation of the statement of the Prime Minister is that the actual motivation of the executive advice to the Governor General is not political as presently pleaded, but was to reverse what the new Government perceived as a scandal or injustice. The transcript of the instant proceedings, as well as my notes, show that Mr Astaphan S. C. then continued as follows: " ... It's a possible interpretation. ... We are asking your Ladyship to find that was the purpose of the acquisition.... " I understood Mr Astaphan S.C. to be admitting that the true purpose of the acquisition was to remedy what was perceived as an injustice or scandalous wrong; in other words Mr Astaphan S.C. to my mind was pressing the court to find in favour of the non-political reason, and thus, there seemed to have been no good reason for the matter to have prolonged any further at that point. It seemed to me, based on what Mr Astaphan SC had urged at that point, that the court was positioned to pronounce liability against the Attorney General and go straight to the reliefs sought, for it seemed that it all boiled down to the question of compensation and damages. But Mr Astaphan SC subsequently clarified his position
- [54] In any event, I do not propose to consider the political prong of the case, because, in the first place, Mr Toussaint is not pursuing it; and second, because it appears, based on the transcript and my notes, that Mr Astaphan S.C. is not interested in pursuing it either, although he expressed concern as to how its withdrawal would affect Mr Toussaint's pleadings, the reliefs sought, and the question of damages.
- [55] The non-political limb: As said before, Mr. Astaphan S.C. later on in the proceedings sought to clarify what was understood, or misunderstood as an admission of liability in respect of the non-political aspect of the case. He stressed that all he was trying to say was that if the Court finds the motive was to rectify a public wrong, that would not give rise to exemplary and or aggravated damages under the Constitution. It must be remembered, however, that the Privy Council has said that even if the motive was not political, and was to reverse what the new Government perceived as a scandal or an injustice, it would still not be a proper motive justifying acquisition under section 3 of the Act.

[56] Looking at the non-political aspect of the claim in an objective way, I would say that the question as to what was the true purpose of the acquisition is completely and conclusively answered in the statement of the Prime Minister made in the House of Assembly on the 5th December 2002 about Mr Toussaint's land, prior to, and immediately following his conclusion of his reading of the draft declaration. It would be convenient to reproduce the statement as it forms part of the evidence in the case. The Prime Minister explained the Government's stated intent in respect of the parcel of land owned by Mr Toussaint, and the true reason for the acquisition of the land in the following words:

"Mr Speaker, I move ... to another serious matter; one I consider to be an attempt of certain persons who would want to profit from the assets of the people of St Vincent and the Grenadines. And I turn to the issue of a parcel of land purchased by one, Mr Randolph Toussaint from the Development Corporation in 1990. By Deed No. 3162 of 1990, Randolph Toussaint, Commissioner of Police, close friend and confidante of Sir James Mitchell, then Prime Minister, was sold by the Development Corporation a parcel of land admeasuring, in Canouan 12,957 sq feet. This land was purchased at 50 cents per square foot, paid \$6,478.50 for it. I repeat, for 12,967sq feet, Randolph Toussaint, NDP activist, Commissioner of Police, former friend and confidante of the NDP leadership at the time, paid 50 cents for land, 50 cents, EC\$6,478.50.

In that Deed, 3162 of 1990, the following covenants were mentioned in the second schedule of the Deed:

1. That there was to be no resale by Toussaint of the said land without the permission of Development Corporation.
2. That the said land must be developed within three years from the date of this conveyance. The date of the Deed was the 28th of August, 1990; so by the 27th August 1993, Toussaint should have developed the land.
3. Failure to develop the said land within the three year period without the Development Corporation's agreement, will mean that the said land would revert to the Development Corporation at the original selling price.
4. No structure must be erected on the said land without the approval of the Physical Planning Authority. of St Vincent and the Grenadines.

Toussaint did not develop the land in the three years, and the Development Corporation did not take back the land. Rather, something peculiar happened in the year 2000. Another Deed was signed by the Development Corporation, 591 of 2000, on the 5th of March 1996 ... but they did not register it until 2000. And what does it say

Now this indenture witnesseth, that the Development Corporation hereby releases the purchaser ...Toussaint from the performance of all restrictions and stipulations as contained in the aforementioned indenture.

Do you hear this? Fast forward in the year 2002 November, there is a valuation certificate presented by the lawyer for Toussaint, where he is selling the land to one Michael Bowman, formerly of St Vincent and the Grenadines, but currently residing in the Cayman Islands, a person who I understand to be a family member of Randolph Toussaint, selling the same land for \$268,820.00. **Accordingly**, Mr Speaker, the Government of St Vincent and the Grenadines ... Honourable members, have taken the decision to write letters to a number of persons including Randolph Toussaint, and certain matters were bang, dealt with. But this particular act required for the Government, the Cabinet of this country, to act with dispatch, with speed, with focus, not to allow this injustice to be perpetrated, this scandal.

Accordingly, the Cabinet took a decision, and I gave appropriate instructions that today, Thursday the 5th of December and (sic) Extraordinary Gazette was published by the Government of St Vincent and the Grenadines with a first publication ... And that is what this Government has done. This is a Government of laws and not of men. Whoever individual may think he possesses a right, there is always the law court. But we cannot sit idly by.

Mr Speaker, this is something that did not happen in 1974 you know, before the NDP was formed. ... This is something which happened after NDP was formed. In 1990 after they won 15 nil, and in the year 2000, when they were in their death throes, they released Toussaint from all the restrictions and stipulations."

- [57] What I take from that statement is that the Government's expressed intent was to deny Mr Toussaint the true market value of the land, to prevent Mr Toussaint from profiting from the "assets of the people of St Vincent and the Grenadines". As far as the Government was concerned, Mr Toussaint, a close friend and confidante of the then Prime Minister and an NDP activist had bought the land in 1990 at a low price of \$6,478.50, released from all restrictive covenants, and was now looking to sell the land for \$268,820.00. It had to act swiftly to prevent this "injustice" - this "scandal" from happening. And act it did. To that end, the Cabinet caused to be published two declarations of acquisition - not in an **ordinary** issue of the Gazette as the Act stipulates, but in an **Extraordinary** issue of the Gazette because it had to act swiftly - with dispatch. At the end of his reading of the draft declaration, the Prime Minister reverted to the action taken by Cabinet: "We have acted," he said. I entertain no doubt that Cabinet's true purpose in advising the Governor General to publish the declaration of acquisition was to redress what it perceived was a scandal or an injustice. Moreover, it was to prevent Mr Toussaint from obtaining the market value of the land because the way he came by the land amounted to unjust enrichment from the assets of the people of St Vincent and the Grenadines. This is evident when it is considered what Mr Toussaint

was being offered as payment for the land. The Government was in fact taking back the land and giving back Mr Toussaint his money, since the Development Corporation did not take back the land as it stated that it would do if Mr Toussaint had not developed it within three years.

- [58] If one looks at the words preceding, and the words following the word "Accordingly", in line 33 of the statement reproduced herein, one sees clearly in those words, the true purpose - the true motive for the Acquisition of Mr Toussaint's land.

The Oxford Dictionary of English Volume (Revised Edition), 2005, describes the word "accordingly" in two senses:

1. as a result
2. in a way that is appropriate to the particular circumstances

The word "accordingly" has also been referred to as a connecting word, meaning "because of the reason given"; "therefore", "hence", "consequently"; "thus"

- [59] In the present case, it seems clear from the context that the Prime Minister has used the word "accordingly" in the sense of "as a result of" "because of the reason given", "consequently", "therefore", thus, "hence", thereby connecting what he said before the recital of the declaration to what came after, i.e. the actual recital of the declaration and the subsequent building of a Learning Resource Centre on the land.

- [60] Significantly, in his explanation to the House, prior to the recital of the declaration, the Prime Minister made no mention of the need to acquire the land for a public purpose of building a Learning Resource Centre. It follows that the public purpose recited in the declaration was a different purpose to that which is inferred in the Prime Minister's statement and thus, such purpose as was stated in the declaration was a sham, and the acquisition, a stratagem, for in truth, the Government wished to take back the land from Mr Toussaint only to ensure that he did not get to sell it at the market value, and thereby receive a profit from it; for, as far as the Prime Minister was concerned, the land belonged to the people of St Vincent and the Grenadines. As the Privy Council held, that was not a proper motive justifying acquisition under section 3 of the Act.

- [61] Of significance too, (as Mr Maharaj S.C. has helpfully pointed out) is the fact that the Prime Minister has not disassociated himself with the alleged motivation of the words stated by him; he has not said that he did not intend to say those words. There has been no denial that the statement was made. Nor has there been a withdrawal of the statement. Indeed, the Privy Council has explicitly stated that if the Prime Minister did say that he did not intend to say those words, it would

not be Mr Toussaint who will be challenging what was said in the House. Mr Toussaint is not challenging the statement made in the House. He is relying on the statement. .

- [62] I accept Mr Maharaj S.C.'s submission that it cannot be a proper purpose to acquire the land to deal with an injustice. It is an unlawful purpose, because the law provides a procedure for acquisition and this procedure was ignored even before the statement of the Prime Minister was made. It must have been in the contemplation of Cabinet (of which the Prime Minister is head) that it was not going to do the right thing and follow the statutory procedures contained in the Act. The failure to follow the statutory procedures meant that the Government 's intent was to deny Mr Toussaint the true value of the land which in turn corroborates the true purpose of the acquisition.
- [63] In oral argument, Mr Maharaj S.C. submitted that it cannot be a proper purpose, if one wants to redress something which one thinks is an injustice; or if it is thought that there has been corruption, or dishonesty or nepotism, to proceed in the way that the Government has proceeded, because the law provides a procedure to deal with such allegations or accusations. I am entirely in agreement with that submission.
- [64] In the course of arguments, Mr Anthony S.C. stressed the point that the Resource Centre has in fact been built. That fact, Senior Counsel has submitted, should go to the state of mind of the Government; as it is evidence that the public purpose actually named and published in the Gazette was in fact executed and implemented by the Government. Mr Astaphan S.C. was of the further view that it would be wrong for the court to look only at what the Prime Minister said without looking at the subsequent events to show the purpose which he had in fact identified in the House. It was Mr Astaphan S.C.'s further submission that the fact that the Learning Resource Centre was built, and the fact that the public purpose was implemented, gives further support to the Attorney General's case that damages of the kind claimed should not be granted. It would have been different if the Centre had not been built, but it was, submitted Mr Astaphan S.C.
- [65] It must be remembered that the main defence put forward by the Attorney General pertains to the Government's policy in respect of education. In that regard, considerable stress was placed in the Attorney General's Affidavit on the fact that the Learning Resource Centre was in fact built on the land in question, making a total of 14 Learning Resource Centres throughout the State. If that deposition was intended to justify, or to legalize retrospectively and or retroactively what was done illegally, then the court cannot accept that argument, for if this were so, the Government can always circumvent the Land Acquisition Act and the constitutional rights embedded in the Constitution.
- [66] That the Learning Resource Centre was built on the land should not be considered in isolation from the clear words spoken by the Prime Minister in the Parliament as to what was the true purpose of the acquisition. In this regard, I am agreement with Mr Maharaj S.C. that in light of the Prime Minister's clear words, the fact that the land is now the site of the Marine Resource Center is irrelevant to the legal question of the true purpose of the acquisition, and that the relevant and

operative date for determining the true purpose of the acquisition is the date on which the Government made the declaration. In any event, even if the court were to have regard to the actual existence of the Learning Resource Center, I do not consider the existence on the site as the real or operative or dominant purpose of the acquisition of Mr Toussaint's land

- [67] It must be re-emphasized too, that the transcript of the statement shows that the Prime Minister only identified the purpose in the context of the declaration that he had read. It is also important to bear in mind that in his explanation to Parliament, the Prime Minister said nothing about the purpose for which the land was to be acquired. It is therefore a fair inference that the Government, though professing to exercise its statutory power of acquiring the land for the public purpose of a Learning Resource Centre, was in fact employing that power in furtherance of the ulterior motive of taking back the land from Mr Toussaint, thereby reversing what was seen as an injustice or a scandal arising from the sale price of the land, and to prevent Mr Toussaint from making a profit on the land. So the state of mind of the Government is to be ascertained not only by reference to the existence of the Learning Center, but also by reference to the words spoken by the Prime Minister in the Parliament, prior to, and after the reading of the Declaration, and by its ignoring of the provisions of the Act.
- [68] Therefore, despite the existence of the Learning Resource Centre, the court views the public purpose residing in the declaration as a sham, a stratagem to deprive Mr Toussaint of his land. It was neither honest, nor true. If the Government had an honest purpose that was within its statutory powers, it would have resorted to the statute, and it would have employed the proper legal procedures. I find the purpose to be an impermissible purpose, and that impermissible purpose materially influenced the acquisition.
- [69] Mr Astaphan S.C. has taken issue with the evidence of Ms Marlon Mills as contained in her Affidavit, which says, in effect that the land was not suitable for a Learning Resource Centre. Mr Maharaj S.C. responded by saying that even if Ms Mills' Affidavit were disregarded, it would not change anything because of the admission made by Mr Astaphan S.C. as to what was the purpose of the acquisition. I have already alluded to Mr Astaphan S.C.'s clarification on that issue of the purported admission. No need to dwell on it. I turn to consider the Affidavit of Ms Marlon Mills.
- [70] For my part, I am not of the view that the Affidavit of Ms Mills is even necessary. Her evidence was not put forward as that of an expert witness. The evidence she has given is opinion evidence. She may, or may not have provided a good basis for evaluating the suitability of the land in question for a Learning Resource Centre, and in any event, the fact that the Resource Centre was built on the land, tend to destroy her opinion as to suitability. That said, Ms Mills' affidavit was only challenged by Mr Astaphan in his submissions. Other than that, it stands unchallenged as she was not cross-examined on it.
- [71] As previously mentioned, Mr Astaphan S.C. has also taken issue with Mr Toussaint's decision not to pursue the political aspect of his pleadings and has submitted that this is a major decision which

will affect the court's decision on the matter in respect of the reliefs claimed. Mr Maharaj S.C. does not agree. His response was that the Privy Council recognised that there were always two claims - one political the other being that the true purpose was not to acquire for a public purpose, but the acquisition was a sham, and stratagem, when in fact the Government wanted to take the land from him. Further, Mr Maharaj S.C. submitted that there is no likelihood that the Attorney General will suffer any prejudice if the political aspect were to be removed from the pleadings. He contended that where there is a question of law on admitted facts, in respect of liability, the court does not require pleading for that. As authority for that contention, Mr Maharaj S.C. cited a passage from the case of **Rahaman and another v Attorney General of Guyana and another**, ¹⁵:

" I recognize that in the course of civil litigation, there may be situations where a judge, whether flowing from his considerable experience on the bench or from his extensive knowledge of the law may identify a point of law, which, though not pleaded surface in the course of the hearing. ... A judge in such a situation would by virtue of the provisions of Order 23, r 4 of the Rules of the Supreme Court have wide powers to give effect to such a point of law."

[72] Mr Maharaj S.C. has not identified the equivalent rule in the CPR 2000. However, Mr Maharaj SC also placed reliance on a passage from the case of **Bethia v Thani** ¹⁶ :

"I am fully appreciative of the broad viewpoint that efforts should be made to ensure that disputes, if possible, should be resolved on merit rather than on points of pleading, but even with this desire in mind, it will always be necessary to have due regard as to whether there is any likelihood of prejudice arising from lack or insufficiency of notification of the specific issues sought to be raised. For how could disputes be resolved "on merit" unless each party has been sufficiently apprised of the nature and effect of the other's case if he is not to be handicapped in presentation of his own. Of course, when no such issue arises, a court might find it expedient not to trouble itself about the exact form of pleadings if it is plain that the parties came to court prepared to try the particular question although it might not have been specifically raised as such. "

[73] As far as Mr Maharaj SC was concerned, there can be no surprise, because the Privy Council said there were two interpretations; and Mr Astaphan S.C. knew it; so there is no surprise.

[74] It is the law that amendments to a statement of case may be allowed which are necessary to ensure that the real issues which are in dispute between the parties are determined, and provided that such amendments can be made without there being any injustice to the other party¹⁷. Given the nature of the proposed amendment, which Mr Maharaj suggested, the Attorney General will

¹⁵ (2009) 73 WIR 274

¹⁶ (1972) 18, WIR, page 251 E, F, G.

¹⁷ Per Justice of Appeal Blenman in *George Allert et al v Joshua Matheson and Madeline Matheson*, GDA HCV2014/0007; See also CPR 20.1 (2).

suffer no prejudice. By withdrawing the political aspect of the case, the Claimant has not set up a new case, because the non-political aspect of the case was always at the forefront of the Claim. It can stand on its own. And the Attorney General came to court prepared to deal with it. So there is really no 'ambush' as Mr Astaphan S.C. has insinuated. In my judgment, the amendments proposed can properly be reflected in the Order made in light of the circumstances of this case.

FINDINGS

[75] For all the above reasons, I have come to the following conclusions:

1. The evidence as contained in the statement of the Prime Minister establishes that the Government purported to acquire the land, not for the purpose of building a Learning Resource Centre, but to reverse the perceived injustice and or scandal arising from the sale price of the land, and to deprive Mr Toussaint from making a profit on the land. That purpose was an impermissible purpose, and that impermissible purpose materially influenced the acquisition.
2. Because of the statement, the court finds that despite the existence of the Learning Resource Centre, in reality, the purpose residing in the declarations was a sham, a stratagem to deprive Mr Toussaint of his land, and that even though the Learning Resource Centre was actually built on the land in question, it does not mean that it was a lawful exercise of power under the Act. The court is of the view that although the purpose in the declaration was carried into effect, that purpose was not the dominant, real or operative purpose of the acquisition.
3. In keeping with the tenor of sections 6 (1) and 6 (2) of the Constitution, and section 6 (2) (c) of the Act, and having regard to the conduct of the Government in failing to observe the procedural requirements of the Act; and in failing to resort to the High Court for redress on a case stated in respect of the transaction between Mr Toussaint and the Development Corporation; failure to appoint a Board Assessment to determine the question of compensation, the Court takes the view that these failures constituted breaches of the duty of the Government to observe the procedural requirements stipulated in the Act. These breaches infringed Mr Toussaint's rights guaranteed by sections 6 (1) and 6 (2), of the Constitution, and his constitutional right of access to the Court under section 6 (2) (c) of the Constitution was infringed, namely, his right of appeal from the Board of Assessment for the determination of the compensation to be paid to him.

[76] Consequently, I find for the Claimant on the issue of liability. That brings me to the question of the amount of the award of compensation and damages.

COMPENSATION AND DAMAGES

- [77] The parties to this case have taken different approaches to compensation and damages. Mr Astaphan S.C. has taken the view that Mr Toussaint is entitled to be compensated for his land, and for loss of use plus interest under the Act - nothing else. Mr Maharaj S.C. on the other hand does not agree that assessment is to be determined under the Act. Senior Counsel posits that Mr Toussaint's case is for redress under section 16 of the Constitution and thus, he is entitled to compensation, plus vindictory damages plus aggravated and exemplary damages and an additional award for distress. In this regard, I consider that a Claimant whose fundamental rights enshrined in the Constitution, have been infringed, is entitled to redress under s 16 of the Constitution.
- [78] The parties have also taken differing views as to whether sufficient evidence is before the court for the assessment of the market value of the land. Mr Maharaj S.C. is of the view that there is; Mr Astaphan S.C. does not agree. He was concerned that Mr Toussaint was relying on the recent sale of land in the general area of the subject land, when there was no indication that the locality, topography, water, lights etc was the same as that of his land. I pause here to note that contrary to what Mr Astaphan S.C. has said, a reading of the Deeds of Indenture on file, reveals that both lands feature the same easements and appurtenances: "with all ways, waters, watercourses, rights, lights, liberties, fences, drains and all other easements and appurtenants thereto belonging..." And Mr Toussaint spoke to the topography of the lands in his Affidavit. It is perhaps more significant to note that the case law establish that the sales comparison approach is an acceptable method to be used where comparisons are available. This is implicit in the decision of **The Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton and Lona Eileen Bufton**, supra, wherein His Lordship Barrow J.A. quoted Lord Romer in **Sri Raja v Revenue Officer**¹⁸ as saying:

" It is perhaps desirable in this connection to say something about this expression "the market price". There is not in general any market price for land in the sense in which one speaks of a market for shares, or a market for sugar, or any like commodity. The value of any such article at any particular time can readily be ascertained by ascertaining the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices being obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by the market value... "

- [79] Another case in which the sales comparable method was validated is **Windward Properties Ltd v Government of St Vincent and the Grenadines**¹⁹ in which the Privy Council stated as follows:

¹⁸ [1939] 2 All ER 317

¹⁹ (1995) 47 WIR 189, referred to by Barrow J.A in AG of Antigua and Barbuda v Estate of Bufon and Bufon, *ibid*, page

"In order to arrive at the price likely to be obtained on a notional sale ... a valuer normally undertakes a study of sales of comparable land. The value of any such comparison depends on selected sales also having taken place under the same market conditions."

- [80] In principle therefore, there is nothing wrong with the sales comparable method approach as a method of valuation. No one has said that Mr Toussaint is a valuer, but in my opinion, Mr Toussaint has been proactive, and has provided the best evidence of valuation that is before the court. at this point in time. I have to accept that Mr Toussaint was comparing like with like, and that the sale he was comparing was sale of land with the same features and character of his land. If this were not so, the Attorney General was under an obligation to have disputed the contrary when given the opportunity by the Court to do so in April 2014.
- [81] Mr Astaphan S.C. has pressed the court for an adjournment to give the parties an opportunity to put in evidence including a valuation report in respect of the subject land. Mr Maharaj was opposed to an adjournment on the ground that Mr Toussaint had put in his Affidavit evidence since the year 2012, and the State has not put in any evidence to challenge it. Counsel emphasised that it is now twelve years since the matter commenced, and the State had every opportunity to put in a valuation and any other evidence it wished to put in. In this regard, it bears referring, once again to the Order of Mme Justice Combie-Matyr at the status hearing dated 9th April 2014. In that Order, the learned Judge gave the Attorney General an opportunity to put in evidence in response to all the Affidavits of Mr Toussaint. In the main, the evidence of the Attorney General was in respect of the Government's policy of building Learning Resource Centres. There was no challenge to the contents of any of the Affidavits put in by Mr Toussaint. The Attorney General failed to challenge the value suggested by Mr Toussaint. or the correctness of the method used to determine the value of the land. A challenge is only being implied in the written submissions and at the hearing during the course of submissions. Mr Astaphan candidly told the court, however, that the Court's Order of 14th April 2014 was only passed to him a week before the date set for trial. The reason for that delay was not given. Moreover, on the date of trial, there was no attempt to cross examine Mr. Toussaint, and his evidence went wholly unchallenged. In those circumstances, I am content to come to a determination of the market value based on the sales comparison approach suggested by Mr Toussaint. The court considers that it is in a position to make an assessment of the value of the land based on the unchallenged evidence before it.
- [82] However, in relation to the additional damages claimed, it would have been helpful if Mr Maharaj S.C. had aided the court by suggesting figures for damages which are being claimed under the Constitution. Nonetheless, given, among other things, the inordinate delay with which this matter has been met, and the court, being entirely in agreement with Mr Astaphan S.C. that it is time that Mr Toussaint be paid for his land, the court is not inclined to adjourn the matter for additional evidence or submissions to be put in by either of the parties, as this would further prolong the matter. The court will do the best it can with what is before it.

The Award of Compensation for the Land

- [83] The payment of fair compensation is at the heart of compulsory acquisition. Mr Toussaint had originally sought the return of the land to him. That cannot reasonably happen. So he is entitled to be compensated for his land. How should the value of the land be determined?
- [84] Ordinarily, the value to be paid for land that is compulsorily acquired is the market value of the land as it existed twelve months prior to the date of the second publication in the gazette of the declaration. This is pursuant to section 19 of the Land Acquisition Act which reads: in part " (a) The value of the land shall ... be taken to be the amount which the land, if sold in the open market by a willing seller might have been expected to have realised at a date twelve months prior to the date of the second publication in the gazette of the declaration under section 3." Interestingly, the Act does not prescribe the actual method for determining the value of the land. It will be recalled however, that this is a Constitutional motion and, as Mr Maharaj S.C. has submitted, the assessment is outside of the Act, and is to be done under the Constitution and not under the Act. The Constitution is supreme and the Act must yield to it. Under section 16 of the Constitution, the court has a very wide discretion, to determine the redress /compensation to be given. It is recognised, however, that this discretion is not to be exercised arbitrarily; it depends on the evidence.
- [85] The unchallenged evidence is that Mr Toussaint, in December 2002 had agreed, and was about to sell the land for \$268,820.00; so in this context, the compensation would normally be that price, plus interest to reflect the Claimant's loss. There has been no denial of the Claimant's agreement for sale of the land at the price of \$268,820.00, and there is no evidence to show that it did not worth that price at the time. But it is not on that amount that Mr Toussaint is asking the Court to make the award. Indeed, Mr Maharaj S.C. has submitted that that measure of compensation would result in a lower award than the present value of the land. In that regard, Mr Toussaint has indicated that a recent sale of land in the area would be good evidence of the present market value of the land. To support his case, Mr Toussaint produced a copy of Deed of Conveyance No 1038 of 2012 dated 6th December 2011 "Between SIR JAMES FITZ-ALLEN MITCHELL ... SARAH LOUISE MITCHEL ... SABRINA MITCHELL, GRETTEL MITCHEL, AMELIA MITCHELL, MOUBAYED AND GABIJA MITCHELL ... Of the One Part; and WINDWARD HOLDINGS LTD ... of the Other Part.." (Sir Mitchell's Deed). The Deed speaks for itself. From it, Mr Toussaint has evidence that in the year 2011, land measuring 2 Acres, 3 Roods and 18 Poles was sold at a price of ONE MILLION TWO HUNDRED AND FORTY THOUSAND UNITED STATES DOLLARS (US 1,240,000.00) (approximately USD\$10.55 or EC \$27.90 per sq. ft.. "with all ways, waters, watercourses, rights, lights, liberties, fences, drains and all other easements and appurtenants thereto belonging..." Based on information contained in Sir Mitchell's Deed of Conveyance numbered 1038 of 2011, Mr Toussaint put the present market value of the expropriated land at US\$10.55 or EC\$27.90 per sq. ft. At the rate of EC\$27.90 per sq ft, the expropriated land would be worth \$361,779.30. It is that figure that Mr Toussaint is asking the court to award him as compensation for the land. In other words, at the date of acquisition (2002) the market value of

the land was \$268,820.00; in 2012 it was worth \$361,779.30 - an increase of \$93,189.30. So the crucial questions become: Whether Mr Toussaint **is** entitled to have the profits added to the market value as it existed at the date of acquisition.? Or whether the Government is entitled to keep the profits?

- [86] Mr Maharaj S.C. submits that the Government is not entitled to keep the profits of its wrong doing, the profit being the increased value of the land. I hold the view that Mr Toussaint should neither be enriched, nor impoverished by the compulsory acquisition. But I also hold the view that this is a case which cries out for justice. In my opinion, justice in this case demands that Mr Toussaint be paid \$361, 779.30 as compensation for the compulsory acquisition of his land, plus interest. Obviously, I am in agreement with Mr Maharaj S.C. that the Government ought not to be allowed to keep the profits of its wrong doing as this would not sufficiently enforce or vindicate the importance of fundamental rights in the rule of law. I am satisfied that the court ought to award Mr Toussaint \$361,779.30, being the value of the land as it existed in the year 2012 when Mr Toussaint swore to his supplemental affidavit evidencing the comparable sale price of land in the same area, and indicating the price per square foot of his land at the time, together with interest at the rate of 6 per cent per annum from the date of the acquisition (5th December 2002) until payment of compensation to reflect the delay in compensation. And I so order.

Compensation for breach of Constitutional rights

- [87] Awards of constitutional damages have two objects: to make the State aware of the measures of its responsibility and to recompense the victim of State action.²⁰
- [88] Mr Toussaint had a constitutional right to enjoyment of his property; he had a right to be paid compensation within a reasonable time; he had a right of access to the Court of Appeal from any decision a Board of Assessment might have made; he had a right to be heard if the Government had taken the correct route to reverse the transaction which was said to be an injustice and a scandal. The Government breached those rights. What damages, should Mr Toussaint recover for such breaches? Basic principles of the law of damages dictate that similar damages must receive similar awards. This case is no exception. There are, however several cases that are helpful in providing guidance on the principles to be applied and the scale of awards of constitutional damages. I find the following to be useful guides although not on all fours with the case at bar:

1. **Ramnarine Jorsingh v Attorney General**²¹ cited by Mr Maharaj S.C.
Ramnarine Jorsingh was a case of "delay of a different kind". In that case, the appellant claimed infringement of his constitutional rights by reason of six and a half years delay by the Industrial Court in delivering its reserved judgment in a case of wrongful dismissal. When the Industrial Court finally delivered its decision,

²⁰ Patterson J.A. in *Fuller v Attorney General* (1997) 56, WIR 337

²¹ (1997) 52 WIR , 501

it awarded the appellant \$3000.00. On the constitutional motion brought before the High Court, the master assessed damages at \$40,000 for distress and inconvenience caused by the delay. On appeal, the Court of Appeal regarded the award as inordinately high and reduced it to \$20,000.00 on the basis that the award for distress and inconvenience caused by the undue prolongation of proceedings must bear some relationship to awards for wrongful deprivation of liberty, or to awards for personal injuries or for defamation. De La Bastide CJ put the award in perspective by considering the award of damages of TT25,000.00 in the case of **Ramesh Lawrence Maharaj v Attorney General**.²² In **Maharaj**, a barrister was arrested in court by order of a judge, taken in his court attire through busy streets, on foot to the police station, fingerprinted, and incarcerated for seven days. He received TT25,000.00 for the deprivation of his liberty and the inconvenience and distress occasioned by his incarceration. The Chief Justice considered that the gravity of what the worker suffered by the delay in getting the judgment, was exceeded by what the barrister underwent in **Maharaj**.

2. **Fuller v Attorney General**²³ which is authority for the view that an award made against the state for breach of constitutional rights must not amount to a windfall. In delivering the majority judgment of the Jamaica Court of Appeal, Patterson J stated at page 402 (g):

"Where an award of monetary compensation is appropriate, the crucial question must be what is a reasonable amount in the circumstances of the particular case. The infringement should be viewed in its true perspective, an infringement of the sacrosanct fundamental rights and freedoms of the individual and a breach of the supreme law of the land by the State itself. But that does not mean that the infringement should be blown out of proportion to reality, nor does it mean that it should be trivialized. In like manner, the award should not be so large as to be a windfall, nor should it be so small as to be nugatory."

Patterson J.A was of the view that an award of J\$1,000,000.00 or (US\$26,000.00) was an appropriate award of constitutional damages for inhuman and degrading treatment; Downer JA. dissenting, would have awarded J\$1,5000.00 or US\$40,000.00 for exemplary or punitive damages. The treatment²⁴ in **Fuller** consisted of the police placing 18 men in a cell measuring 8 feet by 7 feet. The men could not move even their hands freely. The cell was constructed of concrete walls and roofs; it had no windows. The door was made of metal sheets with holes for ventilation but the holes on the inner sheet and the outer sheet of metals were

²² unreported

²³ (1997) 56 WIR 337

²⁴ Facts gleaned from the Buftons case

not aligned so it was not possible to see into or out of the cell; there was no light in the cell and very poor ventilation. The cell was wet and extremely hot. The detainees were deprived of adequate food and water. They were let out briefly about 7:00am the next day and also at 1:00pm; they (together with a nineteenth man) were again locked up in the cell at 1:45 pm. They remained in the cell without food or water until 7:00 or 8:00am on the following day. The police ignored their calls for relief. During the night, three of the men died, including the deceased in respect of whom his mother Doris Fuller brought a claim. The cause of death was cardio-respiratory failure. Ms Fuller's son received insufficient oxygen and an excess of carbon dioxide in the cell.

3. **Merson v Cartwright**,²⁵ which is authority for the view that an award of damages may be compensatory but must always be vindictory: "If the case is one for an award of damages by way of constitutional redress ... the nature of the damages may be compensatory but should always be vindictory, and, accordingly, the damages may, in an appropriate case, exceed a purely compensatory amount."
4. **The Attorney General of Antigua and Barbuda v The Estate of Cyril Thomas Bufton and Lorna Eileen Bufton**²⁶ is analogous to the instant case in that it concerned the compulsory acquisition of land. The trial judge had awarded the Claimants compensation under six heads of damages including compensation for 5 acres of leasehold in the amount of \$ 800,000.00 and compensation for breach of constitutional rights in the amount of \$250,000.00 plus interest at the rate of 4 % per annum. This constitutional damage award was for the Government's deferral of payment of compensation and for distress and emotional travail to the Buftons. On appeal, the Court of Appeal considered that an award of interest would have been quite adequate compensation for the delay in payment. Barrow J.A. delivering the decision of the Court of Appeal said that he did not see that the Buftons were entitled to more, because the only injury that the Buftons suffered was simply that they were being kept out of their money and the established remedy for being kept out of money is an award of interest which the trial Judge had awarded at the rate of 4% per annum from 17th December 1997 (the date at which they were forcibly removed from Guiana Island, situate to the North - East of Antigua). In the words of Barrow J.A "I do not see that the emotional consequences of being kept out compensation can justify an award of damages, whether under the Constitution or generally." Barrow J.A. continued: "It is well settled that in the law of contract that save for specific exceptions, there can be no award for distress, frustration, anxiety, vexation and the like in compensation for breach of contract, and I see no reason why it should be otherwise in this

²⁵ [2005] UKPC 38 at paragraph 18

²⁶ Civil Appeal No 22 of 2004

particular case. However, as the Government did not challenge the entitlement to an award of damages under this head ... I confine my attention to the matter of quantum."

- [89] In the end, Barrow, J.A. considered that the sum of \$10,000. 00 was an appropriate award of constitutional damages.
- [90] Taking into account the principles enunciated in the above cases, and being guided by the awards, and being cognizant that the object of an award of constitutional damages is not to punish the Government for misbehaving, or to teach the government not to misbehave; that the award is to vindicate the right of the citizen; and should not be a windfall; I am of the view that the award of compensatory damage for breach of constitutional rights is reflected in the amount awarded as compensation for the land, specifically the accrued profits of \$93, 189.30 plus the award of interest to reflect the delay in compensation. To my mind, the breach is sufficiently redressed in that award and needs no topping up. To grant an additional award would, in my opinion, amount to a windfall.

AGGRAVATED DAMAGES/DISTRESS/INCONVENIENCE

- [91] Aggravated damages: A look at the second affidavit of Mr Toussaint filed on 16th August 2012, shows that Mr Toussaint deposed that notwithstanding the reliefs claimed in his Fixed Date Claim the Government caused to be constructed a building to house the Marine Resource Center on his land, thereby disregarding the pending proceedings, behaving highhandedly, and demonstrating contempt for the outcome of any court proceedings that may be in his favour.
- [92] In the instant case, I consider that the Government acted highhandedly and treated Mr Toussaint poorly apart from the letter of 26th March 2002. It knew that there were proper lawful routes by which to pursue Mr Toussaint - those anticipated by the Attorney General in her letter dated 26th March 2002 when she wrote: "The entire process was patently wrong and raises questions for appropriate legal determination." The Government rejected that advice and chose to take executive action. Obviously, the Government was not acting in good faith knowing that what it was doing was illegal. It must have known that it was acting to an impermissible purpose. Inferentially, it knew that its decision to act in the way it did was likely to be unlawful, hence the Prime Minister's open challenge: "Whoever individual may think he possesses a right, there is always the law court." Yet, the Government went ahead and acted as if it was above the law. While the matter was in the court, the Government took it upon itself to start construction of the Resource Centre, thereby acting as judge and jury in respect of the land, although it knew that Mr Toussaint was asking the court to re-vest the land in his name.
- [93] It has been said that what begins as an abuse of process and bad faith remains vitiated to the end unless there was some change of attitude or conduct. The only evidence of change of attitude and

conduct that indicate supervening good faith came on the day of trial when Mr Astaphan S.C. in his preliminary remarks indicated that Mr Toussaint was entitled to be paid for his land, plus loss of use and interest, as opposed to compensation, plus exemplary, aggravated and additional damages; and that it was time for him to be paid. Additionally, in the interest of time, Mr Astaphan S.C. was content to have the Court carry out the assessment of compensation, rather than taking it back to the Tribunal. Other than that, the Attorney General fought the case for twelve years at different levels.

- [94] In the light of those aggravating factors, I consider that an award of \$75,000 is reasonable in respect of aggravated damages.
- [95] Distress: No one can seriously argue that compulsory acquisition is not distressing. This is so because it is not something you asked for. However, Mr Toussaint has not, in any of his affidavits made any specific claim that he suffered any injury to his feelings or any particular distress. In my view, if he became fraught with worry, anguish, anxiety or frustration, and suffered stress and inconvenience, he should have deposed to this, rather than leave it to be inferred by the court.²⁷ Therefore, I can find no basis for an award of damages for distress.
- [96] Inconvenience: The closest Mr Toussaint comes to the question of inconvenience is in paragraph 6 of his second affidavit where he states that he has been denied the use and enjoyment of his land since December 2002 when it was published in the Gazette, and since then he has not been able to get any income from the land and has not been able to sell or do any investment with it. In respect of damages for inconvenience, I am of the view that an award under this head is already subsumed and reflected in the figure awarded as compensation for the land and requires no further award.

EXEMPLARY DAMAGES

- [97] Exemplary damages are awarded where a Defendant stands to make a profit from its actions. I consider that this case is not one in which an award of exemplary damages could be made. And even if it could be said that the basis for an award of exemplary damages exist, it is inseparably a part of the compensation for the value of the land, the profits accrued in respect of the value of the land having already been alluded to, and reflected in the figure awarded as compensation for the land.

CONCLUSION

- [98] In all the foregoing premises, I give judgment for the Claimant, Randolph Trueman Toussaint, and I grant the following orders and reliefs:

²⁷ See *Romauld James v The AG of Trinidad and Tobago*, [2010] UKPC 23, Privy Council Appeal No 0112 of 2009.

1. A declaration that the acquisition of All and Singular that piece or parcel of land formerly vested in the Claimant, Randolph Trueman Toussaint by virtue of Indenture registered as No 3162 of 1990, and situate in the Island of Canouan in the Grenadines, the same more particularly set out in Plan No GR37, by Declarations of His Excellency the Governor General, dated 5th December 2002, and dated 10th December 2002, in pretended exercise of powers under the Land Acquisition Ordinance 1916 (now the Land Acquisition Act Cap 322) is unconstitutional, unlawful and null and void.
2. A declaration that the aforesaid acquisition of the said premises of the Claimant is unconstitutional, null and void by reason of being a contravention of the fundamental rights of the Claimant, namely, the right to enjoyment of property **guaranteed in section 6 (1) and 6 (2) of the Constitution**, and not to be deprived of property except for a public purpose, and except where provision is made for the payment of adequate compensation within a reasonable time.
3. An order that the Attorney General do pay Mr Randolph Trueman Toussaint the sum of EC\$361,779. 30 plus interest at the rate of six per cent per annum from 5th December 2002 (the date of the first publication of the declaration in the Gazette) until full payment of compensation.
4. An order that the Attorney General pay Mr Toussaint the sum of \$75,000 as aggravated damages.
5. An order that the Attorney General pay Mr Toussaint prescribed costs.
6. An order that there be prompt payments of all amounts, within 60 days of the date of this order or at some future date to be agreed by the parties.

[99] The judgment attracts interest at the statutory rate of 6 percent per annum from the date of its delivery to the date of final payment.

[100] I am indeed grateful to both Senior Counsel for their very impressive and helpful submissions and authorities.



Pearletta E. Lanns

High Court Judge [Ag]

