

IN THE SUPREME COURT OF GRENADA
AND THE WEST INDIES ASSOCIATED STATES
GRENADA

HIGH COURT OF JUSTICE

CLAIM NO. GDAHCV 2012/0373

IN THE MATTER OF SECTIONS 1, 6 AND 16 OF THE CONSTITUTION OF GRENADA

AND

IN THE MATTER OF THE LAND ACQUISITION ACT, CAP 159 OF THE 2010 REVISED
LAWS OF GRENADA

AND

IN THE MATTER OF THE SUPREME COURT (CONSTITUTIONAL REDRESS-
GRENADA) RULES 1968

AND

IN THE MATTER OF THE PURPORTED ACQUISITION BY THE GOVERNMENT OF
GRENADA OF CERTAIN FREEHOLD PROPERTY FROM THE APPLICANT NOREEN
DE GALE

BETWEEN:

NOREEN DE GALE

Applicant

and

THE ATTORNEY GENERAL

Respondent

Appearances:

Dr. Francis Alexis Q.C instructed by Messrs. Henry, Henry and Bristol for the Applicant
Ms. Kinna Marrast-Victor for the Respondent

2013: December 12

DECISION

- [1] **MOHAMMED, J.:** The Applicant's property situate at Snell Hall, Grenada ("the Snell Hall property") was compulsorily acquired by the Government of Grenada/the Crown ("the Respondent") pursuant to the Land Acquisition Act Chapter 159 ("the Act") in August 2012 for a public purpose.
- [2] The Applicant being unhappy with the manner of the said acquisition has challenged the legality of the acquisition on two grounds. She seeks a declaration that the failure by the Respondent to post notice of the acquisition which was twice published in the Gazette is in contravention of section 3(2) of the Act and is therefore fatal to the legality of the acquisition. She also asserts that the failure of the Government to make "prompt payment" of compensation to her for the Snell Hall property after the acquisition is not in keeping with the Constitution of Grenada¹ ("the Constitution"). She has equated prompt payment of compensation as immediate payment of compensation.
- [3] I will briefly set out the background leading up to the Applicant's claim to place it in its context. The Respondent proposed to acquire the Snell Hall property under the Act. In contemplation of the acquisition the Respondent engaged the Applicant in discussions for the sale of the Snell Hall property to the Respondent. Whether these discussions broke down is in dispute, but the Respondent still proceeded to issue and published two notices in the Gazette concerning the acquisition. In the first published declaration on 10th August 2012 ("the first publication") and the second published declaration on the 17th August 2012 ("the second publication") the Respondent stated its position of acquiring the Snell Hall property. Upon

¹ The Grenada Constitution Act Chapter 126 A

receipt of the first publication Counsel for the Applicant wrote to the Respondent on 22nd August, 2012 enquiring about the availability of funds to compensate the Applicant for her deprivation of the Snell Hall property. In the absence of any response, the instant application was instituted on 11th September 2012 which in effect ended all discussions by the parties on any issue surrounding the acquisition.

- [4] The Respondent has acknowledged that it did not comply with the provision of the Act with respect to the requirement for it to post the notice which was published in the Gazette, on the Snell Hall property. It contends that such failure is not fatal since the Applicant was aware of the intended and actual acquisition. It also submits that prompt payment as set out in the Constitution is not equivalent to immediate payment upon vesting of the Snell Hall property in the Respondent and that the Respondent has not failed to make prompt payment of compensation to the Applicant in accordance with the Constitution.
- [5] The issues for determination by the Court are:
- (a) Was the failure by the Respondent to post a notice of the acquisition on the Snell Hall property fatal to the said acquisition?
 - (b) Are the provisions for "prompt payment" of compensation under the Act in violation of sections 1 and 6 of the Constitution?
 - (c) Has there been a failure by the Respondent to make prompt payment of compensation to the Applicant in accordance with the Constitution?

Was the failure by the Respondent to post a notice of the acquisition on the Snell Hall property fatal to the said acquisition?

- [6] The Applicant has not denied that she was aware of the Respondent's proposed plan to acquire the Snell Hall property. This is consistent with the Respondent's position that although it did not post the declaration on the Snell Hall property, the Applicant was at all times aware of the intended and actual acquisition through discussions with its officials.

- [7] Section 3 of the Act sets out the procedure to be followed by the Respondent where the Governor General proposes to acquire land for a public purpose. The Governor General is required to make a declaration which is conclusive proof that the proposed land is required for a public purpose. The declaration must contain the parish or district in which the land is situated; a description of the land, giving the approximate area and such other particulars which are necessary to identify the land; where a plan has been prepared, the place where, and the time when a plan of the land can be inspected; the public purpose for which the land is required and whether the freehold, leasehold or mortgage interest is being acquired. The said declaration is then published in two ordinary issues of the Gazette and a copy of the said declaration are required to be posted on one of the buildings, if any, on the land to be acquired, or exhibited at suitable places in the area where the land is situated. It is only upon the second publication of the declaration in the Gazette the relevant interest in the land to be acquired vests in the Respondent.
- [8] While the Act is silent on the form of the declaration and the time within which certain acts are to be done, in my opinion, it must be in writing, a reasonable period of time must be permitted to elapse between the first publication and the second publication in the Gazette and that the declaration must be posted on the land before the second publication in the Gazette.
- [9] It is not coincidental that both sections 3 and 6 of the Act refer to the publication of the declaration of the proposed acquisition. Section 3 makes it clear that there are two forms of publication, namely in the Gazette and by posting it on the land to be acquired or close to the said land.

[10] Section 62 of the Interpretation and General Provisions Act² sets out the effect of the publication of a notice in the Gazette as:

“A copy of the Gazette purporting to have been printed by the Government Printery and containing any written law or notice is prima facie evidence in all courts and for all purposes of the due making and tenor of such written law or notice”.

[11] Section 35 of the Evidence Act³ directs that where a Court is to form an opinion on the existence of any fact of a public nature any information contained in a notification in the Gazette is a relevant fact.

[12] In my judgment, these sections only reinforce the effect of the publication of a notice in the Gazette but they do not empower the Respondent to not perform any act expressly imposed by Parliament under section 3 of the Act.

[13] There are several purposes for the posting of the notice on the land, which include but are not limited to notifying the landowner or any other third party who may have an interest (even an interest adverse to the land owner) in the land and notifying the surrounding landowners of a change in ownership of the said land due to the acquisition.

[14] In my view, the two forms were specifically inserted by Parliament since each serves as an additional safeguard to enable the owner and any other party who may be claiming an interest in the land to be aware of the Respondent's intentions and to take any appropriate action. If it was the intention of Parliament to give the Respondent an option of not posting the notice on the land, Parliament would have clearly expressed this position to reflect this intention. The ordinary and literal meaning of the words of section 3 make it clear that both the publication in the Gazette and the posting on the land are mandatory. This means even if the Respondent has made contact and entered into negotiations with the landowner or

² Chapter 153

³ Chapter 92

any person with an interest in the land, it is still duty bound to post the notice on the land since Parliament having expressly included both forms of publication. It is not enough for the Respondent to choose one form on the basis that it was having discussions with the owner who had been aware of the proposed intention of acquisition, as in this case. By failing to place the notice the Respondent has effectively shut out any other party who may have an interest in the land.

- [15] I therefore find that the failure by the Respondent to comply with the provision of the Act to post notice of the acquisition on the Snell Hall property is fatal to the acquisition.

Are the provisions for “prompt payment” of compensation under the Act in violation of section 6 of the Constitution?

- [16] The Applicant contends that the term 'prompt payment' is to be equated with immediate payment. She submitted that the mechanism set out in the Act does not allow for the prompt payment of compensation to the landowner which is in violation with the Constitution. The Respondent disagrees on the basis that what is prompt depends on the surrounding circumstances of each acquisition and that the provisions of the Act for the assessment of compensation by the Board is not in violation with the Applicant's constitutional right for prompt payment. The Respondent also submitted that the procedure set out intended to ensure that there was no undue delay as required by the Constitution.

- [17] Section 1 of the Constitution embodies the fundamental rights and freedoms of persons in Grenada. It states:

“Whereas every person in Grenada is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his or her race, place or origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

- (a) life, liberty, security of the person and the protection of the law;
- (b) freedom of conscience, of expression and of assembly and association;
- (c) protection for the privacy of his or her home and other property and from deprivation of property without compensation; and
- (d) the right to work

The provision of this Part shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in these provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest".

- [18] Section 6 (1) of the Constitution specifically addresses the protection of a person's right where his property has been compulsorily acquired. It provides:

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

- [19] To protect the individual's fundamental right under section 6(1) the framers of the Constitution included section 6(2), which states:

"(2) Every person having an interest in or right over property which is compulsorily taken possession of or whose interest in or right over any property which is compulsorily acquired shall have a right of direct access to the High Court for :

- (a) The determination of his interest or right, the legality of the taking of the possession or acquisition and the amount of compensation to which he is entitled; and
- (b) The purpose of obtaining prompt payment of that compensation".

[20] The applicable law referred to under the Constitution for the prompt payment of compensation is the Act, which provides at section 3(3)(a):

"Upon the second publication of the declaration in the Gazette as aforesaid the land if-

(a) freehold, shall vest absolutely in the Crown:

and the Crown shall in accordance with the relevant provisions of the Constitution and this Act make prompt payments of full compensation as may be due."

[21] Generally, the courts have adopted a liberal interpretation in dealing with their Constitution. In following this doctrine Chief Justice Marshall of the US Supreme Court stated:

"In considering the question then we must never forget that it is a Constitution we are expounding⁴."

[22] The Privy Council in **British Coal Corporation v The King**⁵ in interpreting the Canadian Constitution noted :

"In interpreting a constituent organic statute, that construction most beneficial to the widest amplitude of its powers must be observed."

[23] The Federal Court in India in construing **The Government of India Act 1950** observed:

"... a broad and liberal spirit should inspire those whose duty is to interpret it⁶."

[24] And Lord Diplock in delivering the Privy Council judgment in **Ong Ah Chuan v Public Prosecutor**⁷ said:

"This said, however, their Lordships would repeat what this Board has said on many previous occasions and most recently through Lord Wilberforce in

⁴ McCulloch v Maryland 17 US (4 Wheat)316 (1819)

⁵ (1935) PC 158

⁶ Gopalan v State of Madras (1950)S.C.R.88

⁷ (1980) 3 W.L.R. 855 at 864 G

Minister of Home Affairs v Fisher (1980) AC 319; [1979] 3 All E.R 21 P.C. that the way to interpret a Constitution on the Westminster model is to treat it not as if it were an Act of Parliament but as 'sui generis...' As in that case, which concerned fundamental rights and freedoms of the individual guaranteed by the Bermuda Constitution, their Lordships would give to Part IV of the Constitution of the Republic of Singapore 'a generous interpretation avoiding what has been called the austerity of tabulated legalism suitable to give to individuals the full measure of the (fundamental liberties) referred to."

[25] Closer to home, in **The Attorney General of Grenada v The Grenada Bar Association**⁸ Byron CJ (as he then was) described the approach to be taken in the interpretation of a Constitution as:

"The nature of a Constitution requires that a broad, generous and purposive approach be adopted to ensure that its interpretation reflects the deeper inspiration and aspiration of the basic concepts on which the Constitution is founded. Respect must be paid to the language that is used, and its context, by considering all relevant provisions bearing on the subject for interpretation as a whole, and to the traditions and usages which have given meaning to that language, in order to affect the objective of the Constitution. In order to do this the court must have a sober and objective appraisal of the general canvas upon which the details of the constitutional picture are painted."

[26] Without any good reason to depart from the aforesaid approach, I will therefore adopt a broad and liberal spirit in interpreting sections 1 and 6 of the Constitution. The Respondent is empowered to acquire an individual's property for public use. The procedure set out in section 6(2) of the Constitution is for an aggrieved party to seek redress before the High Court for any of the matters that arise from an acquisition such as determination of interest, legality of the acquisition and the

⁸ Civ Appeal 8 of 1999

amount of compensation either *before* or *after* the acquisition. In my view such action by the aggrieved party does not act as a bar to the Respondent acquiring the property but it implicitly recognizes that an acquisition can take place while such issues (which include the prompt payment of compensation) are still being resolved by the High Court. In my judgment, in seeking to find a delicate balance between the individual's rights and the Respondent's duty to act in the public's interest, the framers of the Constitution allowed the Respondent to acquire an individual's property for use in the public interest but at the same time included this provision to protect the individual's rights to ensure full compensation. The 'prompt payment' must be taken in the context of when the full compensation which is to be paid *has been* assessed. Therefore, if full compensation has been determined (either by the Court, agreement between the parties or otherwise) it is only then that sum must be paid immediately.

- [27] Having been satisfied that the Constitution permits the Respondent to acquire property even while the High Court is engaged in resolving issues related to the acquisition, which includes the prompt payment of compensation, it is now necessary to examine the relevant provisions of the Act to determine if the Act is consistent with the Constitution. In the Act the term "compensation" is defined as "prompt and full compensation as provided for by and under the Constitution". In **Grand Anse Estates Ltd v The Governor General et al**⁹ the Court of Appeal of the Eastern Caribbean Supreme Court considered two issues before it, namely whether the Land Acquisition Ordinance of Grenada satisfied the constitutional requirement of prompt payment of compensation, and whether the constitutional requirement of full compensation was satisfied. In examining the first issue St. Bernard JA at page 443 stated it as:

"It will be necessary to review the provisions of the Land Acquisition Ordinance relating to payment in order to ascertain whether or not those provisions satisfy the constitutional requirement of prompt payment and

⁹ (1977) 1 OECS LR 441

also those relating to assessment of compensation in order to find out whether the constitutional requirement is satisfied."

[28] After reviewing sections 6, 7, 8, 9 and 12 of the Ordinance he stated at page 444:

"On the whole I am of the view that the provisions of the Land Acquisition Ordinance relating to payment of compensation do not infringe the provisions of section 6(1) of the Constitution Order in respect of prompt payment of compensation."

[29] While I agree with Counsel for the Applicant that St. Bernard JA in **Grand Anse Estates** did not define what the term "prompt payment" meant under the Ordinance, the Court of Appeal did make a finding that the provisions set out in the Ordinance for the prompt payment of compensation was constitutional. In **Thomas and Macleod v the Attorney General of Grenada et al**¹⁰ the issue before the Court of Appeal was whether the failure by the authorized officer to comply with the law prevented the aggrieved property owners from pursuing a declaration that they were entitled to have a Board of Assessment set up to determine compensation as provided under the Ordinance. While I accept that the issue of the interpretation of the terms "prompt payment" was not before the Court for determination, at pages 493-494 St. Bernard JA in setting out his interpretation of the Ordinance together with the Constitution stated:

"The obligation for prompt payment of compensation is a necessary incident to the power of compulsory acquisition of property under the Constitution and is one of the fundamental rights which, if infringed, give immediate and direct access to the High Court. It must be remembered that the owners are entitled under section 6 of the Constitution to prompt and full compensation, that is, immediate payment of a just equivalent of the value of the property as of the date of acquisition plus interest at such rate as would compensate adequately for losses incurred up to the date of payment."

¹⁰ (1977) 23 WIR at page 491

- [30] I do not agree with the suggestion by Counsel for the Applicant that the term “prompt payment” was being equated by St. Bernard JA with “immediate payment” since that position appears to be too narrow an interpretation. In my view, St. Bernard JA’s interpretation of “prompt payment” was not just the immediate payment of *any* sum as compensation but his position was broader since he was concerned with immediate payment in the context of a *just sum* for the value of the property which was acquired.
- [31] The procedure laid down in the Act to ascertain the quantum of compensation which, according to the definition of compensation, must be full compensation are sections 6,11,12,13,14,17 and 19 of the Act and are instructive in assessing whether they are consistent with the relevant provisions of the Constitution.
- [32] According to section 6 of the Act even before the publication of the declaration for acquisition an authorized officer is empowered to do certain things depending on the stage of the acquisition. Before the publication the authorized officer can ascertain from the owner of the land the terms and conditions on which he or she is willing to sell the land. After the publication, pursuant to section 3 of the Act, the authorized officer can go further and enter into negotiations or further negotiations for the purchase of the land upon reasonable terms and conditions and by voluntary agreement. However, the authorized officer cannot conclude any negotiations or agreement until the conditions of sale and acquisition are approved in writing by the Governor General. Section 3 also allows the acquisition to be by private treaty. There are therefore three procedural safeguards in the Act to start the process to facilitate prompt payment even before the acquisition of the land.
- [33] If the land owner and the authorized officer fail to arrive at a consensus on the payment of compensation, the Act sets out a procedure which provide for the assessment of compensation under sections 11 to 17 where a Board of Assessment is appointed to assess, award and apportion compensation. Section 13 of the Act provides for the authorized officer to forward documents and particulars relating to “the acquisition or the intended acquisition of the land”.

Section 14 mandates that the Board to promptly hold an inquiry of which no less than 14 clear days' notice is to be given to the parties, and section 17 mandates the Board to act promptly in making an award for full compensation. Section 13 even directs the authorized officer to forward documents relating to the "intended acquisition" or "acquisition" which confirms that this procedure for the assessment of compensation can be done either *before* or *after* the actual acquisition. Section 21 empowers the Board when awarding compensation to add interest at the rate of 5% per annum calculated from the date from which the authorized officer entered into possession until the date of payment of the compensation, which appears to take into account any delay in the payment of compensation.

[34] In my judgment, the provisions set out in the Act indicate that the paramount concern of the framers of the Constitution was the *amount* of compensation to be paid to the individual and not the *time* when the compensation is to be paid. I therefore agree with Counsel for the Respondent that section 3(3) of the Act which permits the vesting of the property in the Crown upon the second publication of the declaration is consistent with the provisions of section 6(2) of the Constitution since it permits acquisition even where compensation and other related issues are still to be resolved by the High Court.

[35] I therefore find that the provisions of the Act do not violate the Applicant's fundamental rights under the Constitution.

Has there been a failure by the Respondent to make prompt payment of compensation to the Applicant in accordance with the Constitution?

[36] While the Applicant has contended that she has been deprived of the Snell Hall property and is still awaiting compensation she has not disputed the Respondent's contention that the authorized officer was in communication with her in attempting to settle compensation and that no price was settled either by agreement or in accordance with the provisions of the Act. The Applicant has clearly stated that upon her receipt of the first publication she instructed her Counsel to enquire from

the Respondent whether it had funds to pay the Applicant as compensation for deprivation of the Snell Hall property. The material part of the letter dated 22nd August, 2012 from the Applicant's Counsel to the Respondent¹¹ states "*Please assure us that the money is available right now*". The instant action was instituted on 11th September 2012 some three weeks after the said letter was dispatched since there was no response from the Respondent. At paragraph 11 of the affidavit of Trevor Barclay filed on 12th April 2013, he stated that subsequent to the institution of the instant action he wrote to the Applicant's Counsel by letter dated 17th October 2012 where amongst other things he enquired of the amount of compensation claimed.

[37] It is clear that at the time of the institution of the instant action there was no agreement by the parties on the quantum of compensation and therefore the Applicant's request for assurances that "money is available right now" was premature. While it may have been prudent for the Applicant to wait more than three weeks after her enquiry before she instituted the instant action, there is nothing in the Constitution or the Act which prevents her from so doing.

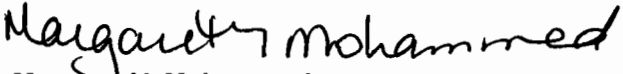
[38] I find that there has been no failure on the part by the Respondent to make prompt payment of compensation to the Applicant in accordance with the Constitution since there was no evidence that the quantum to be paid as compensation was determined.

ORDER

[39] It is hereby declared that the acquisition of the Snell Hall property is void on the basis that the Respondent failed to comply with the provision of the Act to post notice of the acquisition on the property.

¹¹ Exhibit NDG 3 to affidavit of Noreen De Gale filed 11th September 2012

- [40] The provisions of the Act are not in violation with sections 1 and 6 of the Constitution.
- [41] Any entry on the Snell Hall property by the Respondent, its servants and or agents pursuant to the said purported acquisition is unlawful.
- [42] The Respondent is to pay the Applicant damages to be assessed for the purported acquisition and for any entry on the Snell Hall property by the Respondent, its servants and or agents.
- [43] The Respondent is to pay the Applicant's costs of the action to be assessed in default of agreement.


Margaret Y. Mohammed
High Court Judge