

**EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL**

GRENADA

GDAHCVAP2017/0002

BETWEEN:

[1] THE GRENADIAN HOTEL LIMITED
(doing business as the Grenadian by Rex Resorts)
Appellant
and

[1] BERYL ISAAC, CABINET SECRETARY OF GRENADA
[2] HER EXCELLENCY DAME CECILE LA GRENADE, THE
GOVERNOR GENERAL OF GRENADA
[3] THE ATTORNEY GENERAL OF GRENADA
[4] MANAGER OF THE GRENADA GOVERNMENT PRINTER
Respondents

Before:

The Hon. Mr. Davidson Kelvin Baptiste Justice of Appeal

On written submissions:

Mr. Dickon A. Mitchell and Ms. Skeeta A. Chitan for the Appellant
Mr. Thomas W. R. Astaphan, QC, Mr. Dwight Horsford, Solicitor General
and Ms. Maurissa Johnson for the Respondents

2017: February 21.

*Civil appeal – Land Acquisition Act – Section 6 of the Grenada Constitution of 1973 –
Application for interim conservatory orders pending appeal – Whether circumstances exist
wherein which Court ought to grant conservatory order*

JUDGMENT

[1] **BAPTISTE JA:** The applicant, Grenadian Hotel Limited, (doing business as the Grenadian by Rex Resorts) acquired the leasehold interest in 30 acres of land in Grenada from the Government of Grenada, pursuant to a 99 year lease dated July 1991. Pursuant to the terms of the lease, the applicant operates a 212 room hotel

known as Grenadian by Rex Resorts. The applicant's interest in the 30 acres of land has been the subject of attempts by the Government at compulsory acquisition resulting in court action.

- [2] The latest episode in the saga, giving rise to the present application for interim conservatory orders pending appeal, stems from the judgment of Adrien-Roberts J refusing certain relief sought by the applicant, while granting others. The applicant had filed a fixed date claim challenging the decision of the government to compulsorily acquire its interest in the land. The learned judge heard the matter and delivered an oral ruling on 20th December 2016. The learned judge granted a declaration that the decision to compulsorily acquire the applicant's leasehold interest in the 30 acres of land upon which the hotel is located, and which the applicant built, owns and operates, is illegal, null and void. The learned judge also quashed the decision to compulsorily acquire the property. The learned judge granted an order of certiorari quashing the decision to publish in the Gazette on 5th February 2016 the first declaration to compulsorily acquire the property and also declared that that publication was illegal, null and void. The learned judge also granted a permanent injunction preventing the first, second and third respondents from breaching the covenant for quiet enjoyment contained in clause 3(1) of the lease.
- [3] By notice of appeal filed on 16th January 2017, the applicant appealed the learned judge's refusal to grant its relief for: (i) an order of prohibition against the second and third respondents prohibiting them from compulsorily acquiring the property; (ii) an order of prohibition prohibiting the first, second and third respondents from compulsorily acquiring the applicant's hotel business; and (iii) a permanent injunction preventing the first, second and third respondents from derogating from the grant created under the terms of the lease.
- [4] On the same day Adrien-Roberts J gave her ruling, the respondents issued another Notice of Declaration of Acquisition of Land. The first publication in the

Government Gazette was on 23rd December 2016, the second was on 30th December 2016 and the third on 6th January 2017, which purports to acquire the applicant's leasehold interest in the land.

- [5] The applicant contends that given the extraordinary haste with which the respondents have acted in issuing the Notice of Declaration of Acquisition of Land, that should it succeed on its appeal, its fundamental right under section 6 of the **Grenada Constitution of 1973** ("the Constitution") not to be deprived of its property will be immediately and irremediably contravened by the respondents. In the circumstances, it seeks interim conservatory orders, pursuant to section 16 of the Constitution until the hearing and determination of its appeal.
- [6] The respondents oppose the application for interim conservatory orders pending appeal. The respondents contend that the appeal filed by the applicant concerned a controversy regarding a declaration to acquire the subject property published in the Gazette on 5th February 2016 as the first publication and the decision of the government embodied in the declaration to acquire the land. The subject matter of the controversy was extinguished by the judgment of Adrien-Roberts J, appealed against in the notice of appeal filed on 16th January 2017, and the supervening events of the subsequent acquisition of the property which occurred on the 30th December 2016 before the appeal was lodged.
- [7] The respondents argue that subsequent to the judgment of Adrien-Roberts J, it commenced a separate and distinct compulsory acquisition process with the publication of a first declaration of acquisition on 23rd December 2016, which acquisition was made effective and complete by the second publication in the Gazette on 30th December 2016 with the result that the property now vests absolutely in the Crown by operation of section 3(3) of the **Land Acquisition Act**.¹ The respondent posits that the present acquisition is not the subject of appeal nor is it a subject of challenge in any court. There is no longer a "lis" to be decided

¹ Cap. 159, Revised Laws of Grenada.

which will directly affect the rights and obligations of the parties inter se in relation to the proceedings which concerned the declaration of 5th February 2016. The respondents state that the applicant's losses consequent upon the appropriation of the property under the **Land Acquisition Act** will be adequately met by the compensatory mechanism built into the Constitution and the **Land Acquisition Act** for that purpose.

[8] The respondents posit that a conservative order is to preserve the status quo of the subject matter in litigation concerning constitutional rights until the hearing and determination of the substantive public law cause. In support of that they cite **Attorney General v Sumair Bansraj**.² In that regard, the respondents submit that the status quo at the time the appeal was filed and the subsequent application for conservatory orders is that the subject property had been vested absolutely in the Crown by compulsory acquisition which occurred on 30th December 2016. The appeal is therefore rendered academic and there is no status quo which can be preserved in respect of such appeal. The respondents further submit that the jurisdiction of the Court to grant conservatory orders pending an appeal, though it exists, does not arise in this appeal.

[9] The Court's jurisdiction to grant interim conservatory orders is not in doubt. For the reasons they have advanced, the respondents submit that that jurisdiction does not arise in this appeal. The respondents have presented their opposition to the application for interim conservatory orders with clarity but I am not of the view that the application can be disposed of with the simplicity they have advanced. The respondents emphasise that the learned judge declined to grant prohibition against acquisition of the subject property and a permanent prohibition against non-derogation of grant. I note that these are some of the very matters that the applicant seeks to challenge on appeal. The applicant also points to the fact of the grant of a permanent injunction preventing the first, second and third respondents from breaching the covenant for quiet enjoyment contained in clause

² [1958] 38 WIR 286.

3(1) of the lease.

[10] I note that the applicant's basal contention relates to its property rights under section 6 of the Constitution. The applicant quite legitimately complains about the extraordinary haste with which the respondents have acted in issuing the Notices of Declaration of Acquisition of the land after the judgment of Adrien-Roberts J. The respondents acted with such expedition that in a mere ten days after the judgment, they provided themselves with a platform for arguing that as a matter of law the land now vests absolutely in them. Given what has transpired, the applicant's complaint that should it be successful on its appeal, its fundamental right not to be deprived of its property will be immediately and irremediably contravened by the respondents, cannot be taken lightly. It seems to me that it is in precisely circumstances of this kind that a conservatory order is needed. Such an order is intended to preserve the subject matter to ensure that the appeal is not rendered nugatory, thus ensuring that the rights of the applicant would still be capable of protection upon the hearing and determination of the appeal.

[11] I refer briefly to the respondents argument that the judgment of Adrien-Roberts J effectively brought the lis between the parties to an end and that subsequent to the judgment the government began a new process of compulsory acquisition which remains unchallenged. It seems to me that it may be difficult to argue that there is no nexus between the matters in so far as the substratum remains the government's attempts to compulsorily acquire the property in question. The applicant has ventilated its dissatisfaction with parts of the judgment of Adrien-Roberts J by filing a notice of appeal approximately three weeks after the judgment. It is just and proper that the the necessary interim conservatory orders be made so as not to render the appeal otiose.

[12] It is ordered that:

- (1) An interim conservatory order is hereby granted directing that the first, second and third respondents including their officers, servants or agents

take no steps to enforce any of their purported individual or collective rights arising from the Acquisition Notices published in the government Gazette dated 23rd December 2016, 30th December 2016 and 6th January 2017 respectively relating to the applicant's leasehold interest in 30 acres of land situate at Point Salines, St. Georges, which the applicant is currently in possession of pursuant to a lease between the Government of Grenada, represented by the Governor General, and the applicant, dated 29th July 1991 and which is recorded in the Deeds and Land Registry of Grenada in Liber 1-91 at page 219, by which the applicant was granted a ninety-nine year lease of the said 30 acres and upon which is located the hotel known as the Grenadian by Rex Resorts, which the applicant built, owns and operates, until the hearing and determination of the applicant's appeal against the decision of Adrien-Roberts J which was delivered on 20th December 2016;

- (2) An interim conservatory order is hereby granted directing that the applicant be permitted to continue to remain in possession of and to continue to operate the hotel known as the Grenadian by Rex Resorts, which the applicant built and owns, until the hearing and determination of the applicant's appeal against the decision of Adrien-Roberts J delivered on 20th December 2016;
- (3) The Attorney General is to pay to the applicant the costs of this application to be assessed by a judge if not agreed within 21 days.

By the Court

Chief Registrar