

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

THE STATE OF SAINT VINCENT AND THE GRENADINES

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 OF SAINT VINCENT AND THE GRENADINES FOR CONTRAVENTIONS OF SECTIONS 6, 9, 10 AND 13 THEREOF IN RELATION TO HIM

BETWEEN:

RANDOLPH TRUEMAN TOUSSAINT

CLAIMANT/RESPONDENT

AND

THE ATTORNEY GENERAL OF
SAINT VINCENT AND THE GRENADINES

DEFENDANT/APPLICANT

Appearances:

Mr. Ramesh Lawrence Maharaj S.C. with Dr. Godwin Friday Attorney-at-Law for the Claimant/Respondent

Mr. Anthony Astaphan S.C. with Mr. Jaundy Martin Senior Crown Counsel for the Defendant/Applicant.

2004: March 23
May 25

DECISION

[1] **BLENNAN, J:** This is an application dated 14th November 2003, as amended by the Honourable Attorney General of Saint Vincent and the Grenadines to have certain paragraphs of Mr. Randolph Toussaint's claim and his affidavit in support together with Exhibit "R.T. 11" struck out.

- [2] It is important that I deal in some detail with the alleged factual background to this matter based on the claim form and the affidavit in support.
- [3] In 1990, Mr. Randolph Toussaint, a former Commissioner of Police of the Saint Vincent and the Grenadines Police Force bought land from the Government of Saint Vincent and the Grenadines, acting through the Development Corporation, situate in the island of Canouan in the Grenadines. He paid the purchase price of \$6,478.50 and the land was conveyed to him by virtue of Deed No. 3162 of 1990, subject to certain restrictions which were later waived by the Development Corporation Authority based upon his request. As a consequence, Deed No. 591 of 2000 was executed.
- [4] He alleges that by letter dated 26th March 2002 the Hon. Attorney General wrote to him demanding a further payment of \$84,220.00 plus \$4,534.95 for stamp duty for the lands on the basis that he did not pay a fair market price for the land due to his “close relationship to the Government” which provided him with inside information as to the potential of the land. He did not accede to the Honourable Attorney General’s request so she wrote him another letter requesting that he reconvey the land and retrieve the purchase price paid but he did not reply to the letter. By this time he agreed to resell the land for the price of \$268,820.00. He alleges that on 5th December 2002 the Honourable Prime Minister Dr. Ralph Gonsalves in his address to a sitting of the House of Assembly referred to him as “a NDP activist, a former friend and confidante of the NDP Leadership.”
- [5] During the same sitting, he asserts that the Honourable Prime Minister stated that the sale of the land was a “scandal” which required the Government and Cabinet to act with dispatch to correct it, that the Government and Cabinet took the decision and that he gave the directions for the first publication in the Gazette of the matter with a view to the acquisition of his land. In his affidavit he exhibited a translation of the Honourable Prime Minister’s speech as “R.T. 11”.
- [6] In Volume 135 No. 793 of the Gazette, His Excellency the Governor General’s decision to acquire his land acting in accordance with the advice of the Cabinet was published. On

the 10th December 2002, the second publication for the acquisition of the land was released.

- [7] Mr. Adolphus Ollivierre Chief Surveyor (Ag) wrote to him by letter dated 12th March 2003, advising him that a claim for the amount of \$8,717.80 in his name was deposited to the Treasury Department on February 12, 2003. He stated that he did not acknowledge nor accept the payment since he was never approached in relation to the acquisition of his land, before or after the publications in the Gazette. He asserts that the procedure under the Land Acquisition Act Cap 241 has not been followed.
- [8] He filed a constitutional action and seeks to have the court declare that the decision of His Excellency the Governor General to acquire the land based on the advice of Cabinet was unlawful and unconstitutional since it had an “oblique and political motive of depriving him of the land due to his political support.” He also contends that the purported acquisition of his land deprives him of the fundamental right to enjoy his property and is also discriminatory against him.
- [9] By amended Notice of Application, dated the 19th December 2003, the Honourable Attorney General applied to the court for paragraphs 13, 14, 15, 18, 19, 20 and 23 of Mr. Toussaint pleadings to be struck out together with paragraphs 19, 20, 21 and 22 and 27 of his Affidavit in support and exhibit R.T. 11. All of these paragraphs relate to the statement which Mr. Toussaint alleges that the Honourable Prime Minister made during the Budget Debate and which he heard since they were televised and broadcast
- [10] The issues for the court’s determination are
- (i) whether the Mr. Toussaint can bring this case against the Attorney General and/or
 - (ii) rely on statements made by the Prime Minister in the House to create or support his case in light of the separation of powers doctrine, section 46 of the Constitution, and sections 4 and 16 of the House of Assembly (Privileges, Immunities and Powers) Act Cap. 3 of the Laws of Saint Vincent and the Grenadines.

- [11] Learned Counsel Mr. Anthony Astaphan S.C. invited the Court to proceed with the matter as a hearing of a preliminary issue. Learned Counsel Mr. Maharaj S.C. objected and argued that the applications are not matters that should be dealt with in a preliminary manner. During oral submissions Learned Counsel Mr. Astaphan S.C. urged me to find that the genesis of Mr. Toussaint's claim was the Prime Minister's statements in the House of Assembly and that it amounts to a frontal attack on the Prime Minister. Should the court find this to be correct, Mr. Toussaint cannot rely on any other evidence. He urged that once the Honourable Prime Minister's statements are removed from the record as they ought, there would be no basis for the allegations of bias and fraud against the State, save for the statement in the Honourable Attorney General's letter of 22nd March 2002, and this would bring the matter to an end.
- [12] Mr. Anthony Astaphan S.C. submits that the crux of Mr. Toussaint's claim is that his fundamental rights have been contravened as found in the words spoken by the Prime Minister on the 5th December 2002 during a sitting of the House of Assembly. He relied on them extensively as the factual matrix of his case in alleging that the Government has unlawfully acquired his land in violation of his fundamental rights as provided by the Constitution. He further asserts that Mr. Toussaint alleges that the Honourable Prime Minister's conduct were fraudulent and biased in relation to the acquisition of his land.
- [13] Learned Counsel Mr. Lawrence Maharaj S.C. denies that the genesis of Mr. Toussaint's claim is the Honourable Prime Minister's statement since it was made some 9 months after he received the letter from the Honourable Attorney General which indicated the State's intention to acquire his land. Neither do the statements of the Prime Minister form the basis of the claim. His complaint includes the following allegations:
- (a) Breach of his right to the enjoyment of property and not to be deprived of his property except for a public purpose and upon payment for prompt and adequate compensation.
 - (b) Violation of his right not to be hindered in the enjoyment of free expression.

- (c) Abrogation of his right not to be discriminated against or to be accorded deferential treatment on the grounds of his political opinions contrary to section 13 of the Constitution.

He denies that the ground of the constitutional application is based solely the Honourable Prime Minister's speech as stated in Exhibit "R.T. 11". Mr. Toussaint's complaint is based on the alleged unlawful conduct of the Executive before the speech. He posits that the correct procedure for the acquisition of land under the Land Acquisition Act was not followed; as a consequence the acquisition is rendered unlawful. Yet still other grounds are based on what is regarded as the unlawful acts of the Cabinet in advising the Governor General to acquire the lands.

[14] I have reviewed the Fixed Date Claim and the Affidavit deposed to by Mr. Randolph Toussaint together with Exhibit RT 11 and I am not of the view that the claim is one against the Honourable Prime Minister. However I must be mindful of the fact that I cannot make any findings of fact at this stage of the trial. I am satisfied that the claim is against the State and that the Honourable Attorney General is the proper party to represent the State. I am not of the view that the genesis of the claim nor the factual matrix is the Honourable Prime Minister's speech during the Budget Debate in the House of Assembly. It seems to me that Mr. Toussaint is alleging that his fundamental rights have been infringed as a result of a series of matters including his assertion that he has not received prompt nor adequate compensation. The genesis of the alleged unlawful acts, if at all, can be regarded as the Honourable Attorney General's letter to him dated 22nd March 2002 coupled with the letter of refund of his money and the publication in the Gazette of the of the acquisition which is buttressed by the letter of the Honourable Attorney General.

[15] While Mr. Toussaint seeks to accord a lot of weight to what was said in the House of Assembly, the basis of Mr. Toussaint's claim must be his allegation of the State's unlawful acquisition of his property.

[16] I therefore decline Mr. Astaphan's invitation to find that the entire matter would be at an end if the court were to strike out the Prime Minister's statements from the record. I am of

the firm view that the allegations made by Mr. Toussaint in relation to the Honourable Attorney General's letter and the other allegations of failure to follow the procedure as stated in the Land Acquisition Act are distinct factors on which he launches an attack on the constitutionality of the State's actions. This is quite apart from determining the issue of whether or not the property was lawfully acquired.

Section 46 of the Constitution and Section 4 and 16 of the House of Assembly (Privileges, Immunities and Powers) Act

- [17] Section 4 of the House of Assembly (Privileges, Immunities and Powers) Act Cap 3 of the Laws of Saint Vincent and the Grenadines states:

"No civil or criminal proceedings may be instituted against any member –
(a) In respect of words spoken before;
(b) In respect of any matter or thing brought by petition, bill, motion or otherwise, before –
The House or a committee thereof."

- [18] Section 16 of the House of Assembly (Privileges, Immunities and Powers) Act states:

'No evidence relating to any of the following matters, that is to say –
(a) debates or proceedings in the House;
(b) the contents of the minutes of evidence taken or any document laid before the House or a committee or any proceedings of or before, or any examination had before the House or any such committee,
Shall be admissible in any proceedings before a court or person authorized by law to take evidence, unless the court or such last mentioned person is satisfied that permission has been given by the Speaker for such evidence to be given."

- [19] Section 46 of the Constitution states:

"Without prejudice to any provision made by Parliament relating to the powers, privileges and immunities of the House and its committees, or the privileges and immunities of the members and officers of the House and of other persons concerned in the business of the House or its committees, no civil or criminal proceedings may be instituted against any member of the House for words spoken before, or written in a report to, the House or a committee thereof or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise."

- [20] Mr. Maharaj S.C. submits that the clear words of Section 46 of the Constitution afford privileges and immunity to a Member of the House in respect of civil or criminal

proceedings instituted against the Member of the House. The Cabinet as part of the executive arm of the State advised the Governor General to acquire Mr. Toussaint's land. The notice of purported acquisition was published in the Gazette. The Head of Cabinet – the Prime Minister and Minister of Finance in the exercise of executive powers for and on behalf of the State while presenting the country's budget in the House not only made reference to the decision of government to acquire the lands but announced the reasons which motivated the government to exercise its powers of acquisition.

[21] Mr. Maharaj S.C., Learned Counsel asserts that Mr. Astaphan's submissions are misconceived when he submits that the paragraphs of the pleadings and the affidavit, together with Exhibit "RT 11" as relates to words spoken by the Prime Minister during a debate in the House of Assembly of St. Vincent and the Grenadines ought to be struck out in view of section 46 of the Constitution of Saint Vincent and the Grenadines read together with section 16 of the House of Assembly (Privileges, Immunities and Powers) Act.

[22] He maintained that Mr. Astaphan's submissions are erroneous in law because the established principles of law require the Court as part of its duty to examine statements made by Ministers in Parliament to consider and decide whether the decisions and/or reasons and/or policy contained in the statements are lawful. The lawfulness of the acquisition of the land is being challenged in the Claim and the Court has a duty in this case to examine the statements in order to assist in determining whether the government acted lawfully.

[23] Mr. Maharaj S.C. urged me to adopt the approach similar to Judicial Review proceedings in the United Kingdom in which the Courts have to determine whether executive action is unlawful. In these public law proceedings which relate to a Minister's decision, policy or reasons for decisions or policy announced in Parliament, it is regarded as established practice for the Court to examine the ministerial statements to consider and determine the lawfulness of the Ministerial decisions. To assist me, he advanced the learning in *R v Home Secretary ex parte Brind and others* (1991) 1 AC 696 (House of Lords) in which a Ministerial Statement made in Parliament was used as evidence to consider whether the Minister had acted properly. He also cited the following cases in support of this contention

– namely, *Findlay* (1985) 1 AC 318 (House of Lords); *Pierson v Home Secretary* (1997) 3 AER 577 (House of Lords); *R v Home Secretary ex parte Venables* (1997) All E.R. p 97 (House of Lords). In this case he maintained that Mr. Toussaint is saying that the government's actions are unconstitutional in acquiring his lands and that the government through the Honourable Prime Minister announced in Parliament the decisions and reasons for the acquisition of his lands. Article 9 of the Bill of Rights 1689, Sections 4 and 16 of Cap. 3 and Section 46 of the Constitution were intended to protect the integrity of Parliament. Claimants in constitutional law proceedings are entitled in law to use the statements made by a Minister in Parliament as evidence that the Minister acted illegally and/or misdirected himself and/or acted for an unauthorized purpose just as much as he can rely on the contents of a governmental departmental document.

- [24] He referred me to the fact that the Judicial Committee of the House of Lords in 1993 *Pepper v Hart* 1993 1 All ER 1 went as far as deciding that the Courts had the power to even look at proceedings in the Parliament including Ministerial statements to understand such statements and their effect in order to properly interpret legislation. He urged me to find that in any event Section 46 of the Constitution and Section 4 of House of Assembly (Privileges, Immunities and Powers) Act Cap. 3 do not apply to the facts of this case. These provisions of the Constitution and the House of Assembly (Privileges, Immunities and Powers) Act prohibit the commencement of any civil proceedings against any Member of Parliament in respect of any words spoken by him before the House of Assembly. The cases cited by the Honourable Attorney General deal with immunity of Members of Parliament in defamation cases brought against them and related matters. The main effect of that is that no member of the House may be liable in the Courts for words spoken in the course of Parliamentary proceedings. Members may speak in the House knowing that they are immune from the law of defamation. Neither can what is said in Parliament be examined by a Court in deciding whether it supports a cause of action in defamation which has arisen outside Parliament. Those principles are not applicable to a case in which the Prime Minister as Head of the Cabinet makes statements and gives explanations in the House of Assembly concerning the acquisition by the government Mr. Toussaint's lands. The court in any event has the power to examine the statements of the

Prime Minister as part of the history of the matter. (He relied on *Prebble v Television New Zealand Ltd* (1994) 3 All ER p. 407 at p. 418 (d) to (f), in support of his assertion).

- [25] Mr. Astaphan S.C. submitted that Section 46 of the Constitution of Saint Vincent and the Grenadines recognizes the power of the Parliament to make laws relating to the powers, privileges and immunities of the House, its Committees and members, and expressly precludes any civil or criminal proceedings against any member for words spoken by him in the House. Sections 4 and 16 of the House of Assembly (Privileges, Immunities and Powers) Act are in clear terms and reflect the privileges, immunities and powers of the House of Assembly expressly conferred by section 46 of the Constitution.
- [26] Section 46 of the Constitution gives constitutional force to the privileges, immunities and powers of the Parliament of St. Vincent and the Grenadines and its members and unlike section 37, 45, 50 (2) of the Constitution does not begin with the words, "Subject to the provisions of this constitution." This omission in section 46 was deliberate because the Constitution intended to give independent constitutional force to the privileges, immunities and powers of the Parliament and its Members and to ensure that those privileges, immunities and powers remain paramount and not subject or subservient to the other chapters or provisions of the Constitution. As a result, the specific prohibition on the institution of civil proceedings or the use of parliamentary material to give rise to or support civil proceedings is now constitutionally entrenched by the provisions of section 46 of the Constitution of the independent sovereign state of St. Vincent and the Grenadines.
- [27] Mr. Astaphan S.C. agreed that a litigant can invoke Section 16 of the Constitution in order to challenge the validity of the acquisition of his property by the State, but maintained that he cannot rely on the words that were uttered in Parliament to the House in his action. He relied on *Young v Ireland* App. No. 646/94 the European Commission on Human Rights held that the absolute parliamentary immunity did not contravene the right of access to the court under Article 6(1) of the European Convention of Human Rights. In *Fayed v United Kingdom* (1994) 18 E.H.R.R. 393 the European Court of Human Rights held that the total or partial immunity conferred on company inspections under the U.K. company legislation

did not contravene the right of access to the court. In *McElhinney v Ireland* (2002) 34 E.H.R.R. 322 the European Court of Human Rights held that state immunity did not violate the right of access to the court under Article 6(1). And more recently and significantly, the European Court of Human Rights in *A v United Kingdom* (2003) 36 E.H.R.R. 51 held that the parliamentary immunity enjoyed by a Member of Parliament of the United Kingdom Parliament did not violate the right of access guaranteed by Article 6(1) of the European Convention of Human Rights.

- [28] The doctrine of separation of powers is enshrined in the Constitution and prevents the encroachment by one arm of the State on the rights and duties of the other arm of the State and it prevents the court from overriding the immunities provided to Members of Parliament in relation to words spoken during the sitting of the House of Assembly. This in no way prevents the court from reviewing the acquisition of the State's land in order to determine whether it was lawfully carried out. He advanced the learning in *Husbands Advocate Co Ltd* (1968) 12 WIR 454 and *C.O. Williams Construction Co. Ltd. v Blackman* (1990) LRC (Const) 70 at page 75 – 79 (*C.O. Williams Construction Co. Ltd.* concerned an application for judicial review).
- [29] Learned Senior Counsel Mr. Astaphan submitted that in relation to Article 9 of the Bill of Rights, and the wider principle of law governing the immunities and privileges of Parliament, the House of Lords *Pepper (Inspector of Taxes) v Hart* (1993) 2 LRC 153 and *Hamilton v Al Fayed* (2001) 1 AC 395 at page 402 – 404 and the Judicial Committee of the Privy Council in *Prebble v Television New Zealand Ltd* (1995) 1 A.C. 321 have held that the *Hansard* cannot be used to support a cause of action, whether or not arising out of the precincts of the Parliament, or to impute improper motives or purposes to a member of the Parliament or Minister or to show that an Act of Parliament or decision was made for an improper purpose.
- [30] In my judgment section 4 of the House of Assembly (Privileges, Immunities and Powers) Act Cap. 3 of the Laws of Saint Vincent and the Grenadines is very clear. It prevents a Member or Parliament from being sued or prosecuted for any words spoken by that member in the House of Assembly. I am satisfied that the legislature intended to protect

members of Parliament from being sued in any court whatsoever for any words they use during the sitting of the House of Assembly on the basis of their parliamentary privilege.

- [31] Section 46 of the House of Assembly (Privileges, Immunities and Powers) Act must be read consistent with section 4. I am not of the view that section 46 of the Act should be given the restrictive interpretation as contended by Learned Queen's Counsel Mr. Maharaj. To me the section must mean that the privileges and immunities are accorded to members of the House of Assembly in relation to statements they make during the sitting are privileged and this is so whether or not the member is sued personally. In any event section 4 of the House of Assembly (Privileges, Immunities and Powers) Act prohibits a Member from being sued so that section would be rendered useless if I give it the meaning that Learned Counsel Mr. Maharaj S.C. urges me to. In my judgment Mr. Anthony Astaphan, Learned Queen's Counsel is correct in stating that words used by Members of Parliament during a debate in the sitting of the House of Assembly cannot be adduced as evidence in any proceedings whatsoever and this is so whether or not the Member of Parliament is a party to the proceedings.
- [32] In *Pepper v Hart* (*ibid*) Lord Browne Wilkinson at pages 182 – 183 drew a clear distinction between an application for judicial review on the one hand, and proceedings in which a litigant seeks to use Hansard to establish that a Member of Parliament acted improperly in saying what he did in Parliament on the other. Earlier on in his judgment at page 182 (1993) 2 LRC, Lord Browne Wilkinson expressly approved of *Church of Scientology of California v Johnson-Smith* relied on by the Attorney General, and agreed that an allegation that a Member of Parliament acted improperly in saying what he did in Parliament "plainly would amount to questioning a Member's behaviour in Parliament and infringe Art. 9." I am in entire and respectful agreement with this view.
- [33] I am unable to find any inconsistency between the provisions of the House of Assembly (Privileges, Immunities and Powers) Act and section 16 of the Constitution the latter which provides for redress for breaches of fundamental rights. There is nothing in sections 4 and 46 of the House of Assembly (Privileges, Immunities and Powers) Act which prevents

Mr. Toussaint from instituting proceedings against the State for its alleged breaches of his fundamental rights. The conjoint effects of the sections are that he is unable to rely on the statement made by the Honourable Prime Minister during the Budget Debate as one of his bases, but this does not prevent him from relying on other grounds that are not related to the Honourable Prime Minister's speech during the Budget Debate.

- [34] I will not allow any challenge to the decision to acquire the land based on what the Honourable Prime Minister is alleged to have said during the Budget Debate in the House of Assembly.

Speaker's Permission

- [35] In view of my findings I do not propose to deal with the ground of whether or not the Speaker gave permission for Mr. Toussaint to use the Hansard since it is no longer necessary.

Striking Out

- [36] CPR 2000 Rule 30.3(3) states that the court may order that any scandalous, irrelevant or otherwise oppressive matter be struck out of any affidavit. The court is therefore empowered to strike out any inadmissible parts of an affidavit. Part 26.3 of the CPR 2000 empowers the court to strike out a statement of case or part of it. The court may strike out a part of a statement of case under Part 26 (3) (1) (b) if it appears that the impugned part does not disclose any reasonable ground for bringing the claim. It may also do so under Part 26.3 if the part to be struck out is an abuse of the process of the court or is likely to obstruct the just disposal of the proceedings.

Conclusion

[37] I will therefore strike out paragraphs 13 to 15 of the Claim together with paragraphs 19 to 21. In relation to his affidavit I will strike out part of paragraph 22 line 6 from “Indeed to having regard and” of Mr. Toussaint’s affidavit and exhibit “R.T. 11”.

[38] In view of the above, it seems clear to me that I should give further directions with a view to the early disposition of the matters. Accordingly, I hereby order

- (a) That paragraphs 13 to 15 of the Fixed Date Claim together with paragraphs 19 to 20, paragraphs 22 of Mr. Toussaint’s affidavit, line 6 the words “Indeed having regardand”, and exhibit “R.T. 11” be struck out.
- (b) Mr. Toussaint is granted leave if necessary to file and serve an amended Claim together with a supplementary affidavit on or before 10th June 2004.
- (c) The Honourable Attorney General is to file and serve an Affidavit in Answer together with supporting documents no later than 1st July 2004.
- (d) Mr. Toussaint is to file and serve an Affidavit in Reply, if necessary on or before 15th July 2004.
- (e) Skeleton arguments to be filed and exchanged by the parties on or before 27th September 2004.
- (f) The trial is fixed for 4th and 5th October 2004.

[39] The costs of this application shall be costs in the cause.

[40] I thank all learned counsel for their assistance.

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Louise Esther Blenman
HIGH COURT JUDGE