The Respondent's claim in respect of land, buildings plant and equipment amounted to Rs 20,840,80 According to the Appellant these were worth Rs 17,500, There is no significant discrepancy in the valuation o the two experts. Any Judge having heard the arguments counsel on both sides cannot be said to have erred whe awarding an amount which is 2.86% more than the amount acknowledged due by the Appellant and short of 14.20 % of the amount claimed. I would find that the amount o R. 18 million arrived at and awarded by the Learned Ch Justice is fair and reasonable in the circumstances.

Before dealing with goodwill I consider that i is proper to examine the question of insurance which w not specifically raised by the Appellant in its state of Defence and which was first raised without objectio from the Respondent when Counsel for the Appellant wa cross-examining Mr. Ethangatta (P.W.1).

The question reads : "what would be the effec or what effect it would have on your valuation if I w to tell you that experts have concluded that the New Depot as it is built is almost uninsurable bacause th manner in which the tanks had been built does not con to the International Oil Installation Standard. In o words no insurance company in London would be willin take on insurance of this installation?"

From then on an issue was raised regarding the inherent defects in the installation at the Newport and Air Port Depot which represent 0.79 of the total assets. The contention being that the present condition of the two Depots which were almost uninsurable would seriously reduce their value.

The Learned Chief Justice's finding is as follows :

"I find that the structures at the depot in Victoria Port are defective in that the tanks are too congested and fire fighting equipment is inadequate and the whole complex is too close to the Electricity Power Station and the whole will have to be resited". (This latter statement is indeed not in accordance with the evidence). "To a lesser extent the location of plant and adequacy of fire fighting equipment at the Air Port is defective. Bearing all this in mind and including the goodwill which I am of the view our law does permit to take into consideration I estimate a sum of R. 35 million".

My understanding of this finding is as follows :-

Value of assets less defects, resiting and inadequacy of fire equipment plus goodwill = R. 35.000.000.

Reading through the cross-examination by Counsel for the Appellant and his address in the Supreme Court I understand his point to be that the Victoria Depot of the Shell Company was unsafe because it had certain inherent fire hazards which could cause a catastrophic loss at any given point of time as a result of which it became uninsurable, therefore, the costs of the necessary remedial measures should be deducted from the compensa-

According to this view the assets are worth R. 17,588,928, the expenses required are estimated at R. 14,949,000 thus leaving a compensation of R. 2,625,000.-.

Both counsels were agreed at the hearing that up to the day of the hearing before this Court no remedial work had been undertaken. And this is the back bone of Respondent's argument to submit that it was neither necessary nor urgent to spend Rs 14,949,000 to render the assets insurable. Why is it, he argues that nothing has been done for three years to carry on those most required repair and how is it that the equivalent service is being performed without the equipment having been made insurable.

The Respondent adduced evidence that if some Rs 2 million were spent on the depots they would become insurable on the London market.

The Learned Chief Justice whilst finding that there were remedial works to be performed did not timate how in his judgment these works could affec the price which a willing buyer would be prepared pay to a willing seller on an open market sale.

For my part, having to choose between the two options on a balance of probabilities on a matter which was not specifically pleaded and taking into consideration that the situation has been allowed to remain unchanged since July 1985 I am more inclined to find that the probability is greater and more reasonable to invest Rs 2 million which would allow the buyer to obtain the required insurance cover.

We now reach the "goodwill" issue.

The Respondent has claimed Rs 40 million.

The Second Schedule to the Lands Acquisition Act in its Part IV General and Saving provision provides in paragraph 9(b) that :

"If it is conclusively shown that in the case of acquisition of business premises that there is a loss of goodwill then an equitable adjustment (incresse or decrease) may be made to the compensation assessed under Part II (Lands) or Part III (Buildings) of this Schedule".

What is an equitable adjustment ? Has the Respondent sufficiently indicated what is the adjustment he was praying for ?

The Appellant, argues, that on the day the notice of acquisition was given the licence which is required by law to exploit the lands and buildings for the purpose for

I do not think it is necessary for me to exp
an opinion on the matter as I would find that the
Respondent has failed to show conclusively that th
is a loss of goodwill justifying an equitable adju
ment which would increase the compensation in resp
of the Lands or the Buildings. I would with great
respect find that the Appellant is right in submit
that the Learned Chief Justice erred by not statin
what distinct amount constituted the goodwill comp
In the circumstances I would find that no amount i
in respect of goodwill.

The valuers' fee was not contested, I would a
the Respondent Rs 16,065,000.

I must now turn to the cross appeal. I hav
already found that there is substance in grounds
1(a) and (b) and my findings in the appeal have ta
them in consideration.

As regards ground 3 I am unable to agree wi
Respondent. This ground fails. Under section 27
is a matter for the President after oonsultation
the Minister and having taken into account the na
interest and all the relevant circumstances of th
to determine how the compensation is payable.

In the end I would allow the appeal, dismis
the cross appeal and would order the Appellant to
to the Respondent the sum of Rs 16,065,000.

Supreme Court would be quashed.

As to costs I agree with the fixed orders of costs proposed by my brothers (Sgd. S[illegible]

~~I would make no order in respect of the costs in the Supreme Court and would order the Respondent to pay the costs of the Appellant in respect of the appeal, the cross appeal and the notice of objection.~~

18.9.89. (Sgd. S [illegible]

Government of Seychelles   Appellant

and

Shell Company of the Islands Ltd   Respondent

For the Appellant : Mr. Amaranath

For the Respondent : Mr. Georges.

Civil Appeal No.11 of 1988

Judgment of d'Arifat J.

Under the Land Acquisition Act a claimant may agree to submit the determination of the amount of compensation to arbitration or institute proceedings against the Republic in the Supreme Court.

Shell and Co. Ltd. chose to institute proceedings before the Supreme Court.

The Lands Acquisition Act is silent on any right of appeal of the parties whether the determination of the compensation is by arbitration or by the Supreme Court.

Section 11(1) of the Courts Act. Cap.43 as amended by Act No.6 of 1983 provides that "Subject as otherwise provided in this Act or any other law, the Court shall in civil matters have jurisdiction to hea and determine appeals from any judgment or order of the Supreme Court given or made in its original or appellate jurisdiction".

Section 11(4) of the amended Act provides that the expression "civil matters" includes all non-criminal matters".

I am therefore of opinion and would find that th determination of the Supreme Court in the present cas is a "civil matter" and that in the absence of any specific provision in the Courts Act or in any other law this Court had jurisdiction to hear an appeal fro the judgment of the Supreme Court in the present matt

This is an appeal by the Government of Seychelles and a cross appeal by Shell and Co. Ltd. herewith referred to as "the Company" as a result of a decision of the Supreme Court (Seaton C. J.) awarding to the Company an amount of Rs.35 million as compensation for the compulsory acquisition of Lands and Buildings in virtue of the Lands Acquisition Act 1977 as amended.

Before dealing with the merits of the appeal it is necessary to consider an objection of the Company which reads as follows :-

"Take notice that on the hearing of the appeal th Shell Company of the Islands Ltd., the Respondent abov named, will raise the question of Jurisdiction of the Seychelles Court of Appeal, namely, whether there is a right of appeal from a determination of the Supreme Court of Seychelles in proceedings under section 24 of Act 10 of 1977".

The words that have triggered that objection are be found at the end of section 24(5) of the Act :-

"is binding on the parties".

The company raises the question : "Is a determina by the Supreme Court under section 24 of the Act appea able to the Court of Appeal ?"

The point is new and has never been raised befor so that no guidance can be sought from jurisprudence.

The expression "shall be binding on the parties" in the context of Section 24(5) of the Lands Acquisition Act cannot but be read as a consequence of the determination in the form of a judgment which is binding on the parties unless as provided in section 11 of the Courts Act one of the parties (or both) avail themselves of the right which is therein conferred to them to appeal to this Court.

I would therefore set aside the objection raised by the Respondent.

The Government of Seychelles has appealed on the following grounds :-

1. The learned trial Judge has seriously misdirected himself on the principles of valuation applicable in the assessment of compensation payable for lands acquired under the Lands Acquisition Act No.10 of 1977.

2. The judgment contains numerous inaccurate facts and figures which indicate that the learned trial Judge has failed to appreciate the complex nature of the evidence led on behalf of the appellant.

3. The learned trial Judge failed to take into account the testomony of the expert witnesses led on behalf of the

4. The learned trial Judge failed to make any findings on the credibility, expertise, acceptability of the several expert witnesses led on behalf of the appellant and the respondent. The failure to do so makes it clear that the final award of Rs. 35 million is an arbitrary figure arrived at without a rational evaluation of the evidence led in the case.

5. The learned trial Judge erred in concluding that goodwill should be taken into consideration in determining the value of the land acquired. He erred further by not stating what distinct amount in his view constituted the goodwill component. This is a further demonstration of the failure of the trial Judge to appreciate the complex nature of the evidence led in this case.

The Respondent cross appealed on three grounds but at the hearing Ground No.2 was abandoned. -

The grounds are :-

1. The Learned Chief Justice erred in his finding that the whole Victoria Port Depot Complex would have to be resited in so far as :-

   (a) he failed to give sufficient weight to evidence brought by the Respondent that with improved fire-fighting the complex could remain at its location for insurance purposes;

   (b) in any event evidence brought by the Appellant

2. (abandoned)

3. The Learned Chief Justice erred in law in refusing to determine the amount of compensation payable on the basis of payment over twenty years.

As Learned Counsel for the Appellant was addressing this Court it was felt that at the end of the day he would submit that the case be remitted to the learned trial Judge for re-consideration. The question was put to him. He as well as his learned friend were agreed that this Court could review whatever shortcomings are to be found in the judgment and may assess the compensation payable by the Appellant to the Respondent.

1. I propose to deal with the grounds of appeal as suggested by Counsel for the Appellant.
Grounds Nos 1 and 5 are taken together and then grounds 2, 3 and 4 together.

Grounds 1 and 5 raise the following question :-

(i) were the principles of valuation applicable in Seychelles correctly followed ?

(ii) if so what is the amount payable ?

(iii) is goodwill payable and if so to what extent

(iv) must the immovable assets be repaired so as to make them insurable ? If so what are the costs ? Should those costs be deducted from the amount which would otherwise be payable for the buildings ?