(4)

IN THE SEYCHELLES COURT OF APPEAL

ATTORNEY GENERAL APPELLANT

VERSUS

JOSEPH MARZORCCHI
CHARLES MARZORCCHI RESPONDENTS

Civil Appeal No. 8 of 1996
(Before: Silungwe, Ayoola & Adam JJA)

....

Mr. A. Fernando for the Appellant
Mr. P. Boulle for the Respondents

JUDGMENT OF THE COURT

Delivered by Silungwe, J.A.

This is an appeal from a majority decision of the Constitutional Court (Perera and Amerasinghe JJ, Bwana, J. disenting) in which the appellant's objection based on the doctrine of res judicata was rejected.

The history of this case is that the respondents' leasehold interest in parcel No. V1040 was compulsorily acquired by the Government on May 14, 1984, under Sections 10(1) of the Lands Acquisition Act No. 10 of 1997. The Minister of National Development offered the respondents R710,000 as compensation but this was rejected. The respondents then brought before the Supreme Court an action against the Government of Seychelles, claiming compensation in the sum of R8,099,564. Seaton, CJ, awarded them the sum of R1.5 million.

After the coming into force of the current Constitution of the Republic of Seychelles on June 21, 1993, the respondents lodged a claim with the Ministry of Community Development "for compensation in respect of the leasehold interest in Title V1040 acquired under the Lands Acquisition Act ..." By a letter dated July 4, 1995, the Ministry of Community Development was "unable to review the compensation paid" as this had already been "determined by the Supreme Court." It was this refusal that gave rise to a

petition before the Constitutional Court. Paragraphs 5 and 6 of the petition were couched in these terms:-

> "5. The decision of the Government contained in the letter dated 4th July 1995 is a contravention of Part III of Schedule 7 of the Constitution, to the extent that the 1st and 2nd petitioners have a right to the remedies available thereunder regardless of the position of their claim under the Lands Acquisition Act 1977.
>
> 6. The decision of the Government of Seychelles mentioned in paragraph 5 above is unconstitutional."

The respondents prayed, inter alia, for a declaration that they were entitled to the remedies under Part III of Schedule 7 to the Constitution.

For the purposes of this judgment, it suffices to refer to the following portion of the said Part III:-

> "Part III
> **COMPENSATION FOR PAST LAND ACQUISITIONS**
>
> 14(1)The State undertakes to continue to consider all applications made during the period of twelve months from the date of coming into force of this Constitution by a person whose land was compulsorily acquired under the Lands Acquisition Act, 1977 during the period starting June, 1977 and ending on the date of coming into force of this Constitution and to negotiate in good faith with the person ..."

The Memorandum of Appeal against the majority decision rests on the following grounds:

> "1. The Learned Judges A.R. Perera and C.A. Amerasinghe erred in law in holding that -
>
> (a) the plea of res judicata does not apply; and

> (b) the petitioners who had already (been) awarded compensation by a determination of the Supreme Court in case No. 74/85 could make a fresh application under section 14, Part III, Schedule 7 of the Constitution.
>
> 2. The learned Judges A.R. Perera and C.A. Amerasinghe erred in not taking into consideration the fact that the petitioners had not appealed against the said determination referred to in paragraph 1(b) above."

It is, in our view, unnecessary to subdivide ground 1 into sub grounds (a) and (b) as the latter is simply a consequence of the former.

Res Judicata is provided for under Article 1351 of the Civil Code of Seychelles in these terms:-

> "1351. (1) The authority of a final judgment shall only be binding in respect of the subject matter of the judgment. It is necessary that the demand relate to the same subject matter; that it relate to the same class, that it be between the same parties and that it be brought by them or against them in the same capacities."

The principle of res judicata is rooted in public policy. The rationale is that it is in the public interest that a finality should attach to binding decisions made by courts of competent jurisdiction; and that individuals should not be vexed twice for the same cause. As Corpus Juris Vol. 34 p. 743 eloquently puts it:

> "Res Judicata is a rule of universal law pervading every well regulated system of jurisprudence, and is put upon two grounds embodied in various maxims of the common law: the one, public policy and necessity, which makes it to the interest of the State that there should be an end to litigation - interest republicae ut sit finis litium; the other the hardship

> on the individual that he should be vexed twice for the same cause - nemo debet vexari pro eadem causa."

For res judicata to succeed, not only must there be a final and binding decision made by a court of competent jurisdiction, but there must also be a threefold identity of "object" (i.e the subject matter or what is claimed), "cause" (i.e. the fact, or act, whence the right springs, namely, the cause of action) and "personnes" (i.e. the parties or their privies). See Heirs Rouillon v Alderick Tirant (1983) SLR 169; Pouponneau and Others v Janisch (1979) SLR 130; Seychelles Housing Development Corporation v Fernandez Civil Side No. 131 of 1989 and Julienne v Julienne Civil Side No. 68 of 1991.

In the instant case, the object was the leasehold interest in land; what was claimed was compensation; and the cause of action was the Government's acquisition of the leasehold interest.

Although Perera, J., in the penultimate paragraph of his ruling, spoke of "the 'subject - matter' or the 'cause' of the application", the terms "subject-matter" and "cause" are not synonimous. Be that as it may, the rulings of both Perera and Amerasinghe, JJ, essentially demonstrate that, with the exception of the "object", all the other elements necessary to prove res judicata were present and established. Both learned judges were of the opinion that, as the respondents had, in the previous action, sought monetary compensation only, but not the return of the acquired land, Part III of Schedule 7 of the Constitution had created a "new right" which the respondents were entitled to claim. It was on this premise that they both came to the conclusion that the subject-matter in the previous action and in the present case was not the same with the result that res judicata was inapplicable. Perera, J., succinctly expressed himself thus:

> "In the instant case, the petitioners had sought a review of the compensation already paid in terms of the judgment of the Supreme Court. Hence the short point to be decided is whether the determination of the court operates as res judicata disentitling the petitioners from obtaining full compensation at the market value which is a new right created under the Constitution."

And Amerasinghe, J., concluded his ruling by declaring -

> "that all persons whose lands have been acquired under the Lands Acquisition Act 1977 during the period June 1997 to the date of coming into force of the Constitution and have made applications during the twelve months from the date of coming into force of the Constitution enforcing a right created anew by the Constitution to apply and to be considered for relief while the Government is bound to negotiate in good faith with a view to giving effect to the provisions of Schedule 7 Part III of the Constitution irrespective of whether such persons have already received gratuity or compensation…"

Both excerpts above raise the question whether Part III of Schedule 7 of the Constitution has created a "new right" to which every applicant is entitled, irrespective of whether or not such applicant "has already received gratuity or compensation?"

This is a question of interpretation. Paragraph 14 of Part III aforesaid starts off by providing that -

> "14(1) The State undertakes to continue to consider all applications made during the period of twelve months …"

It seems to us that the provisions of this sub-paragraph are clear and that the manifest purpose of this entire Part (i.e. paragraph 14 as a whole) is, as the heading indicates, "compensation for past land acquisitions." It is a cardinal principle of interpretation that words are to be understood according to their ordinary meaning unless this leads to an absurdity or it is at variance with the manifest purpose of the enactment. Further, there is a presumption that legislation does not contain futile or nugatory provisions.

Going by the preceding paragraph, the words "The State undertakes" mean that the State places an obligation upon itself. The expression "to consider all applications" means exactly what it says: the State is under an obligation to consider all applications pertaining to past land acquisitions provided such applications are within the prescribed period.

The State's obligation "to consider all applications ..." does not necessarily mean "to consider and accept"; it may also mean "to consider and reject" or "to consider and partially accept."

In the instant case, it is evident from the letter dated July 4, 1995 under the hand of Mr. J.A. Nourice, the Principal Secretary in the Ministry of Community Development, that the Government lived up to its obligation as it actually considered the respondents' applications but declined to review the compensation already paid to them in compliance with the Supreme Court judgment.

In an earlier quotation from one of the rulings, reference is made to "res judicata desentitling the appellants from obtaining full compensation at the market value which is a new right created under the Constitution." This would appear to suggest that the respondents were denied "full compensation at the market value." A reading of the Supreme Court Judgment in the earlier case (Marjocci v Government of Seychelles [1986] SLR 103-110) shows at pages 109-110 that this aspect was considered by Seaton, C.J. This is what was said at page 109 e-f:-

> "The Court has to decide what would a willing buyer be prepared to pay to a willing seller on the open market. This is called the market value ..."

In any event, the question whether the respondents were paid full compensation is not an issue in this case.

Although the case of Wholly Pillay v Attorney General Constitutional Case No. 7 of 1994 has nothing to do with res judicata, it is nevertheless relevant to the case under consideration. There, the Constitutional Court held, inter alia, that the petitioner had not been compensated under the Lands Acquisition Act as what he had received from the Government of Seychelles was merely an ex gratia payment of SR15,219 which did not constitute a valid discharge under Section 45 of the said Act. In that case, the Constitutional Court said this (and this is the relevance):-

> "It is conceded and there is no doubt that if the petitioner had the benefit of having been adequately considered by the Government for whatever rights

> subsequently provided for by Chapter III Schedule 7 Section 14 of the Constitution, a subsequent application and the resulting negotiations may not have been available to the petitioner."

Our understanding of the foregoing passage is that had the Government granted adequate compensation - not just an ex gratia payment - the petitioner's subsequent application would have been to no avail.

Quite clearly, the respondents in this case sought a review of the compensation already paid in obedience to the judgment of the Supreme Court. To quote Perera, J (page 5/32) of his Ruling:-

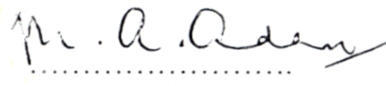
> "Here the State was considering the provisions of paragraph 14(1)(c)(ii) and 92) involving monetary compensation only. The applicants too appear to have been seeking only such relief, not the return of land or an alternative land."

To us, all this demonstrates that the subject-matter adjudicated upon by the Supreme Court and the subject-matter before the Constitutional Court is the same. In any event, we are satisfied, on a proper construction of Paragraph 14, Part III of Schedule 7 of the Constitution, that no new right has been created thereunder. In the circumstances, all the elements necessary to prove res judicata are present in this case. Thus, the plea of res judicata is available to the appellant.

In the result, the majority decision of the Constitutional Court is set aside, the appeal is upheld, and the petition is dismissed.

As this is a constitutional case which raised an important issue that had not been adjudicated upon under the new Constitution, there shall be no order as to costs.

Dated at Victoria this 28th day of November 1997.



A.M. SILUNGWE
JUSTICE OF APPEAL

E.O. AYOOLA
JUSTICE OF APPEAL

M. A. ADAM
JUSTICE OF APPEAL

Handed down
Adam JA