(6)

IN THE SEYCHELLES COURT OF APPEAL

MR. DANIEL BONTE APPELLANT

VERSUS

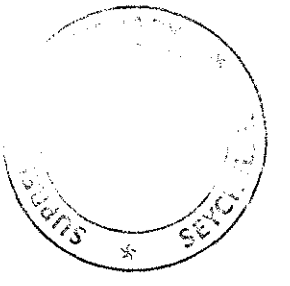
THE GOVERNMENT OF SEYCHELLES 1ST RESPONDENT
THE ATTORNEY GENERAL 2ND RESPONDENT

Civil Appeal No. 20 of 1996

(Before: *Ayoola, Venchard, Adam JJ.A*)

.....

Mr. P. Boulle for the appellant
Mrs. A. Antao for the respondents



REASONS FOR JUDGMENT
(Delivered by E. O. AYOOLA, J.A)

The appellant, Mr. Daniel Bonte, appealed from the decision of the Constitutional Court dismissing his petition. After hearing arguments of counsel on behalf of the appellant and the respondents, we dismissed the appeal with reasons to be given later. Reasons are now given.

By his petition in the Constitutional Court the appellant prayed for the judgment of the court in the following terms:-

> "(a) declaring that the decision of the 1st respondent to delay a decision (as to whether Government will return his property compulsorily acquired and on what condition) is an erroneous interpretation of the Constitution or the Government has no discretion in the matter of transferring land back under Section 14(1)(a) of Schedule 7 to the Constitution where the land has not been developed or there is no plan to develop it.
>
> (b) enforcing the Constitution with a declaration that the Petitioner is entitled to the return of the parcel of land Title No. V3931 and ordering that the Petitioner be registered as owner of Title No. V3931 in the Land Register

in accordance with Section 75 of the Land Registration Act.

© granting such other orders or writs as may be appropriate under the Constitution."

In 1987 the Government of Seychelles ("the Government) compulsorily acquired a portion of land registered as Title No. V3931 with a house thereon ("the Property") situate at La Misere, Mahe. The appellant by a series of correspondence and verbally entered into negotiations with the Government. His letter to the Minister of Community Development prior to the coming into force of the Constitution of the Republic of Seychelles (the Constitution) in 1993 shows that the position he took was that although at the time of the compulsory acquisition of the property in 1987 he had accepted an offer of compensation in the sum of R280,000 that was because of "the circumstances of the time" and that "the present replacement cost of the house" was R550,000 which he then claimed less the amount of R280,000 which he had accepted. He also claimed the return of the house. In his letter of June 1992 written to the Ministry of Community Development he wrote that he noticed that the house had been renovated and that he was informed that it was to be sold., leased or occupied by a Minister. On 25th August 1992 the Ministry wrote to inform the appellant that the said property was still required by the Government to house its personnel and consequently the sale of the property to him could not be considered. By its letter of 24th May 1993 the Ministry expressed the view that when the house becomes vacant the property shall be offered for sale at the current market value. Thus matter stood until 21st June 1993 when the Constitution came into force. Thereafter, further exchange of correspondence ensued between the appellant and the Ministry. The final position taken by the Ministry and communicated to the appellant through the Ombudsman was "that any return of the property will have to be a purchase from the Government since the property is now in State ownership."

It is evident that the position taken by the Government was not pursuant to the provisions of paragraph 14(1)(a) of Schedule 7 of the Constitution which provides as follows:

"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 with a view to -
>
> > (a) where on the date of the receipt of the application the land has not been developed or there is no Government plan to develop it, transferring back the land to the person;

The position taken by the Government was in consonance with an assertion, albeit implied, that the property, as far as an obligation imposed by paragraph 14(1)(a) of Schedule 7 to negotiate to retransfer the property to the appellant is concerned, was not subject to the provisions of that sub paragraph.

The majority of their lordships of the Constitutional Court (Amerasinghe and Bwana, JJ) upheld that view. Amerasinghe, J. in a judgment which is to be commended for its comprehension of the decision of this court in Port Glaud Development Co. Ltd v The Attorney General & Anor (Appeal No. CA.20/94) held the view concurred in by Bwana, J that it was not a matter of obligation for the Government to transfer land which has on the date of the receipt of an application pursuant to para 14(1) of Schedule 7 not been developed.

Counsel for the appellant argued on this appeal that that view is wrong. It was argued that "land which has not been developed" must be interpreted to mean "land which has not been developed by the Government." Counsel sought to fashion justification for an obvious re-writing of the provisions of that paragraph when he argued first, that it would be absurd that it was intended that a person who has developed a small fraction of a large portion of land which had been compulsorily acquired would loose his right to have his entire land back; secondly, that all parcels of land in Seychelles, individually owned is developed land; thirdly that it would be unfair that persons who had not developed his land would be at an advantage over those who had "laboured to develop and invested in their land" and fourthly, that "non-resident foreigners who had speculated in dealings in land" would be at an advantage over a Seychellois who had inherited or purchased land and was more likely to live thereon or develop it to gain some benefits therefrom. It was further submitted that all these "anomalies" would vanish if the interpretation suggested were to apply.

In constructing a statute, where the precise words used are plain and unambiguous the courts are bound to construe them in the ordinary sense.

In R v Judge of City of London Court [1892] 1QB 273 Lord Lester MR at page 290 said:-

> "If the words of an Act are clear, you must follow them, even though they lead to a manifest absurdity. The Court has nothing to do with the question whether the legislature has committed an absurdity."

The apparent harshness of that dictum is ameliorated when read alongside the statement by Lord Halsbury in Cooke v Charles A Vogeler (1901) AC 102 at p. 107 as follows:-

> "But a Court of Law has nothing to do with the reasonableness or unreasonableness of a provision except so far as it may help them in determining what the legislature has said."

The Constitution provides its own general principles of interpretation which in para 8(a) of Schedule 2 includes the principle that "the provisions of this Constitution shall be given their fair and liberal meaning." That principle of interpretation, however, does not sanction the importation of additional words into the provisions of the Constitution to satisfy a subjective standard of reasonableness.

It is evident from the provisions of the Lands Acquisition Act 1977 that building has been treated differently for the purposes of compensation from land which has not been developed. The measure of compensation payable upon a compulsory acquisition of land on which there is a building is in practice and in effect the market value, which can never be "nil", whereas the value of undeveloped land would in all probability be "nil". In Nageon de Lestang v Government of Seychelles 1984 SLR 50, Davey J, put it thus:-

> "Under Part II of the Second Schedule of the 1977 Act land has to be valued for compensation according to the average annual income of the land but not including any income from buildings.
>
> Under Part III buildings shall be valued, putting it plainly, on an open market value basis but not including any future planning potential."

The courts in respect of property compulsorily acquired under the 1977 Act have always endeavoured to determine the value of building by deciding

what "a willing purchaser at arm's length would pay a will seller on the open market." (see for instance Nageon de Lestang v Government of Seychelles (supra); Poole and Another v Government of Seychelles 1986 SLR 35.)

Where land, the object of an application under para 14, is land on which there is a building when it was compulsorily acquired under the 1977 Act, there cannot be any unfairness in interpreting para 14(a) of Schedule 7 in consonance with its plain meaning, so that there would arise no obligation to retransfer such building with the land appurtenant thereto to the owner pursuant to that paragraph. It is manifest that the Government would have paid compensation over such land on a willing buyer and willing seller basis pursuant to the 1977 Act. It stands to reason that the Government which had stepped into the shoes of a willing purchaser paying compensation on the basis of the market value of the property should have a discretion (and not an obligation) whether or not to return the property and on what terms.

On the other hand, land which had not been developed at the date of the compulsorily acquisition under the 1977 Act, would probably have a nil value. A person who has been denied any compensation because his land was of nil value cannot be said to be treated more benevolently by a return of the land to him than one who had received as compensation the full market value of his property.

The anomalies which counsel for the appellant had been at pains to list as consequences of the interpretation favoured by the Constitutional Court, which had followed the decision of this court in the Port Glaud case is strained. Where a building had been erected on a small portion of a large parcel of land, it is evident, as decided in several cases, that the two methods of valuation sanctioned by the Act would be applicable for the purposes of compensation upon a compulsory acquisition of the entire property. The building and the land appurtenant thereto would be valued as building, while the rest of the land would be valued as land which, as the case would probably be, has a "nil value". The argument that all parcels of land in Seychelles individually owned is developed land, is not supported by any evidence and does not merit any serious consideration.

It was for these reasons that the appeal was dismissed.

E. O AYOOLA	L. E. VENCHARD	M.A ADAM
Justice of Appeal	**Justice of Appeal**	**Justice of Appeal**

Given this ...25th... day of ...April... 1997.

Judgment delivered in open court in the presence of counsel.

A. A. Hassan
3.5.97