IN THE SEYCHELLES COURT OF APPEAL

WHOLLY PILLAY APPELLANT

versus

ATTORNEY GENERAL RESPONDENT

Criminal Appeal No: 34 of 1999

[Before: Ayoola, P., De Silva, & Matadeen, JJ.A]

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Mr. P. Boulle for the Appellant
Miss. C. Hoareau for the Respondent

JUDGMENT OF THE COURT

(Delivered by Matadeen, JA.)

This is an appeal against a determination by the Supreme Court of the monetary compensation representing the value of the appellant's land compulsorily acquired under the Lands Acquisition Act 1977.

The appellant had claimed that the appellant's land had no potential for development and that the market value of his land was Rs.14,350.000.00. To reach that figure he claimed to have taken into consideration other transactions involving lands allegedly with similar features as his own land.

The respondent's contention was that the appellant's land had no potential for development and that the market value of the land was Rs.89,290.26 computed on the basis of 28 cts per sq. meter – a figure which was adopted in another transaction where, in the respondent's view, the land had the most similar features with the land in lite.

The learned Judge preferred the evidence of the respondent to that of the appellant and accordingly found that the market value of the appellant's land as at the date of the coming into force of the present Constitution was Rs.89,290.26.

The appellant is now appealing against the judgment of the learned Judge on a number of grounds which essentially challenge the acceptance by the learned Judge of the method of valuation adopted by the respondent. In support of his contention learned counsel for the appellant has put forward a number of reasons.

First, learned counsel for the appellant has contended that the witness called by the appellant had neither expertise nor experience in land valuation with the result that her credibility as an expert witness was seriously shaken. It was counsel's view that the witness, an Assistant Director in the Land Division of the Ministry of Community Development has had no experience in assessing the market value of land as her work was confined to transactions involving the Government. Learned Counsel for the appellant, however, had to concede that there was no precise definition of an expert. The evidence on record shows that Miss Simone Mellie, the Assistant Director in the Lands Division, was not only a qualified Valuer but has, for more than a decade, been involved in property valuation and assessing compensation in respect of land compulsorily acquired by the Government. In the result we hold that the criticism levelled by learned counsel for the appellant is unjustified.

Secondly, it was the contention of learned counsel for the appellant that the valuation made by the respondent was flawed inasmuch as Miss Mellie had never visited or inspected the land in lite except for a visit by helicopter made a week before the hearing. The witness had conducted her valuation by merely looking at maps and, in counsel's view, could not have

made a realistic comparison with other transactions involving lands with similar features.

That submission, in our view, overlooks a fundamental aspect of the respondent's case. It was the case for the respondent that the land in lite was inaccessible and that such inaccessibility was a factor to be taken into consideration in finding the value of the land. As rightly pointed out by learned counsel for the respondent, the witness could not have visited a plot of land that was inaccessible and which the learned Judge found to be mountainous, steep and rocky. In the circumstances she chose the most practicable alternative and flew over the land by helicopter. It is significant to note that even the witnesses called by the appellant had not been on the land for the past thirty or more years except for one Mr. Willy André who worked in the Forestry Department and who claimed to have in the course of his duty made a tour of the area on foot some three months before the hearing. In the circumstances, we are of the view that the absence of any site visit did not affect the reliability of the valuation made by the witness, the more so as it was open to her to interpret official maps and plans, which admittedly showed the topography, and use them as a basis for valuation.

Thirdly, learned counsel for the appellant submitted that the various plots of land, subject matter of a number of transactions referred to by the appellant, had more similarities with the appellant's land and that the learned Judge was wrong to prefer the single alleged comparable sale relied upon by the respondent which, in the appellant's view, did not satisfy the criteria of comparison. We note, however, that, unlike the respondent, the appellant did not call any valuer to depone on his behalf. The appellant, who admittedly had no experience or training in land valuation, sought to give evidence on the similarities between his land and lands which were the subject matter of other transactions. When his evidence was pitched by the learned Judge against that of Miss Mellie who

explained the various factors that determined valuation and was thoroughly cross-examined, it was his evidence that was found by the learned Judge to be wanting, the more so as less than six months before making his claim of Rs.14,350,000.00, the appellant had put in a claim to the tune of Rs.625,000.00 only.

We have scrutinised the evidence on record in the light of the submissions made by counsel and we are unable to say that the learned Judge was wrong. The evidence which was accepted by the learned Judge shows that Miss Mellie explained the basis of her valuation and the factors she took into account to say whether one plot of land is comparable or not to another. In her view, which was accepted by the learned Judge, the plots of land referred to by the appellant could not be compared to the appellant's land inasmuch as those plots of land were situated in developed areas, had a different topography and were accessible. Her reasons as to why the appellant's land could only be compared to the plot of land referred to in a transaction mentioned by her were accepted by the learned Judge. True it is that the learned Judge referred to that transaction as a sale when in fact there was a negotiated settlement. That description was, however, immaterial the more so as the payment was for a specified sum as monetary compensation representing the market value of land compulsorily acquired.

Learned Counsel for the appellant sought to find fault with the finding by the learned Judge that most of the appellant's land was, like the plot of land in that other transaction, mountainous, steep and rocky. But as rightly observed by learned counsel for the respondent, that finding is supported by the evidence of the appellant himself as well as that of his witnesses.

The evidence placed before the learned Judge and accepted by him also showed not only that the appellant's land formed part of the Morne

Seychellois National Park and was thus subject to the restrictions imposed by the National Parks and Nature Conservancy Act but also that for the past five years no planning permission had been granted for construction in that National Park within the proximity of the appellant's land.

True it is that the learned Judge wrongly referred to Section 10 of that Act which makes special provisions relating to Strict Natural Reserves when the applicable provision was Section 9 as the appellant's land formed part of the National Park. But it is clear from the whole tenor of his judgment that he was all the time referring to National Parks and not Strict Natural Reserves. Nor was it in dispute that the appellant's land formed part of the National Park and was not a Strict Natural Reserve. At any rate the learned Judge accepted and acted upon the computation of Miss Mellie whose evidence shows clearly that the appellant's land was now part of the National Park. In the result, the reference by the learned Judge to the wrong section of the National Parks and Nature Conservancy Act could not and did not affect the finding by him that the method of valuation adopted by Miss Mellie was appropriate and could be acted upon.

We take the view that the criticisms levelled at the learned Judge's decision are without substance. In the result we dismiss the appeal with costs.

E. O. AYOOLA	**G. P. S. DE SILVA**	**K. P. MATADEEN**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Delivered at Victoria, Mahe this 13th day of ***April*** 2000.