IN THE SEYCHELLES COURT OF APPEAL

JOSEPH MARZOCCHI — 1ST APPELLANT

CHARLES MARZOCCHI — 2ND APPELLANT

versus

THE SEYCHELLES GOVERNMENT — 1ST RESPONDENT

THE ATTORNEY GENERAL — 2ND RESPONDENT

Civil Appeal No.48/99

[B*efore: Ayoola, P., Silungwe & De Silva, JJ.A]*

Mr.P.Boulle for the Appellants

Mr.A.F.T.Fernando, Attorney General with Ms.L.Valabhji for the Respondents

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JUDGMENT OF THE COURT

(Delivered by De Silva, JA.)

The Appellants (then the Petitioners) in their petition filed before the Constitutional Court averred as follows :

1. On 16th May 1984 the Seychelles Government compulsorily acquired Parcel V 1040 situated at New Port, Mahe which was leased by the 1st and 2nd Petitioners.

2. The 1st and 2nd Petitioners claimed a sum of R.8,099,564.00 under the Lands Acquisition Act 1977 and was awarded a sum of R.1.5 million as compensation by a judgment of the Supreme Court in Civil Side No.74 of 1985 dated 20th May 1986.

3. After the Constitution of the Republic of Seychelles came into force the 1st and 2nd Petitioners lodged a claim under part III of Schedule 7 to the Constitution for the remedies available thereunder.

4. By letter dated 4th July 1995 the Ministry of Community Development informed the 1st and 2nd Petitioners that the Government was unable to review the compensation paid as the compensation had been determined by the Supreme Court.

5. The decision of the Government contained in the letter dated 4th July 1995 is a contravention of Part III of Schedule 7 to the Constitution to the extent that the 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.

(Emphasis added)

The Petitioners prayed for judgment in the following terms :

"a) declaring that the decision of the government mentioned in paragraph 5 above is based on an erroneous interpretation of the Constitution by the government and is therefore unconstitutional,

b) granting a Writ of Certiorari quashing the decision of the government ~~mentioned in paragraph~~ 5 above,

c) declaring that the 1st and 2nd petitioners are entitled to the remedies under part III of Schedule 7 to the Constitution."

Justice Juddoo and Justice Karunakaran dismissed the petition. Justice Perera entered judgment for the petitioners as prayed for in paragraphs (a) and (b) of the prayer to the petition. The present Appeal is against the majority judgment of the Constitutional Court.

Part III of Schedule 7 to the Constitution reads as follows:

"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 with a view to-

a) where on the date of 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;

b) where there is a Government plan to develop the land and the person from whom the land was acquired satisfies the Government that the person will implement the plan or a similar plan, transferring the land back t the person;

c) where the land cannot be transferred back under subparagraphs (a) or subparagraph (b)-

(i) as full compensation for the land acquired, transferring to the person another parcel of land of corresponding value to the land acquired;

(ii) paying the person the full monetary compensation for the land acquired; or

(iii) as full compensation for the land acquired, devising a scheme of compensation combining items (i) and (ii) upto the value of the land acquired.

(2) For the purposes of subparagraph (1), the value of the land acquired shall be the market value of the land at the time of coming into force of this Constitution or such other value as may be agreed to between the Government and the person whose land has been acquired."

The main issue which arises for decision in this appeal is whether the government could lawfully refuse to "negotiate" and reject the application made by the appellants in terms of Paragraph 14(1) of Part III to Schedule 7 of the Constitution on the ground stated in the letter of 14th July 1995, namely, "....that the government is unable to review the compensation paid....as this was determined by the Supreme Court....." The learned Attorney General submitted that Part III in Schedule 7 of the Constitution did not create a new right to compensation but only gave an undertaking "to continue to consider" a right to compensation which some persons had lost by the operation of certain provisions of the Lands Acquisition Act and the laws of Prescription. Our attention was drawn to sections 10(2), 11(5)(a), 18(4), 23(1), 24(1), 24(3), 27(4) and 18(1) of the Lands Acquisition Act 1977, and it was submitted that by the operation of these sections persons could lose their right to compensation. The learned Attorney General emphasized that the words "continue to consider" means to continue to consider a right which some persons had lost in terms of the provisions of the Lands Acquisition Act 1977 and the laws of Prescription.

We find ourselves unable to agree with these submissions. On a fair reading of Part III of Schedule 7 there is nothing to indicate that the "Constitutional undertaking" was confined to persons who had lost their right to compensation by reason of the provisions in the Lands Acquisition Act and the laws of Prescription. There is no basis upon which we could take the view that the legislature intended something, which it failed to express.

A court is slow to read words into an Act of Parliament and more so in regard to a provision of the Constitution. Lord Mersey in ***Thompson v Goold*** (1910) A.C.409, 420 stated the principle thus :

> *"It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do."*

What is more, Ayoola J.A in ***Daniel Bonte v The Government of Seychelles and the Attorney General*** (Civil Appeal No.20 of 1996, judgment delivered on 25th April 1997) stated :

> *"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....."*

Furthermore, it would not be correct to lay undue emphasis on the words "to continue" which occur in paragraph 14 (1). The relevant collocation of words are "to continue to consider all applications" made during the specified period of time. In so far as persons who have already lost their right to compensation by reason of provisions in the Lands Acquisition Act, it is difficult to envisage what would remain for the state "to continue to consider."

The Learned Attorney General relied strongly on the following passage in the judgment of the Constitutional Court in ***Wholly Pillay v The Government of Seychelles and the Attorney General*** (Constitutional Case No.7 of 1994, judgment delivered on 19th September 1995) ;

> "It is conceded and there is no doubt that if the petitioner had the benefit of having been adequately considered (sic) by the Government 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."

In our view, this cannot be considered as an authoritative pronouncement on the proper interpretation and intendment of the Constitutional provision as it was no more than an observation made obiter, when considering the question of the locus standi of the petitioner.

It was also the contention of the Learned Attorney General that the appellants had already been compensated by the judgment of the Supreme Court on the basis of market value and therefore they are not entitled to any further monetary compensation under paragraph 14(1)(c) of the Constitution. This contention is not acceptable because it overlooks the plain, clear and unambiguous provisions of paragraph 14(2) which states, *"For purposes of subparagraph (1) the value of the land acquired shall be the market value of the land at the time of coming into force of this Constitution....."*

(emphasis added)

The judgment of the Supreme Court was delivered on 20th May1986 and the Constitution came into force on 21st June 1993.

On a consideration of the matters set out above , we hold that the decision of the Government contained in the letter dated 4th July 1995 is in contravention of Part III of Schedule 7 to the Constitution and that the Government has a constitutional obligation to consider the application of the appellants with a view to granting appropriate relief in terms of the Constitutional provisions. However, it is necessary to make it clear that the quantum of compensation already paid by the State in terms of the judgment of the Supreme Court is an important and relevant fact which has to be taken into account in the process of negotiation.

The above finding would suffice to dispose of the appeal. However, there is a further objection raised by the learned Attorney General which, in our view, merits consideration. It was the contention of the learned Attorney General that the appellants were not entitled to any of the remedies under Part III of Schedule 7 to the Constitution for the reason that the word "land" which occurs in paragraph 14(1) –

"The State undertakes to continue to consider all applications made.....by a person whose land was compulsorily acquired under the Lands Acquisition Act 1977....." – cannot be given an extended meaning to include a "leasehold interest". It is not disputed that in the appeal before us what was acquired by the State was the leasehold interest of the appellants in Parcel V 1040.

In support of the above submission, the learned Attorney General relied heavily on the interpretation given by the Court of Appeal to the word "land" in paragraph 14(1)(a) in the case of ***Port Glaud Development Co Ltd v The Attorney General and Port Glaud Hotel Development Ltd*** (Appeal No.C.A.20/94, judgment delivered on 6th June 1995) In that case the Court of Appeal held that the word "land" in paragraph 14(1)(a) must be given its ordinary meaning and not an extended meaning to include "interests in and rights over land". It was the contention of the learned Attorney General that it would be illogical to give the word "land" in paragraph 14(1)(a) its ordinary meaning and to give the same word an "extended meaning" in paragraph 14(1).

In order to consider the above submission it is necessary first to appreciate the reasoning of the Court of Appeal in that case. The clear and cogent reasoning of the Court of Appeal was in the following terms:

> *"Land has not been defined in Schedule 7. Notwithstanding that in some statutes 'land' is given an extended meaning to include interests in and rights over land, there is no reason why when in paragraph 14 of Schedule 7 'developed' is used to describe 'land', land should be given other than its ordinary meaning as a material and substantial thing having mass and occupying space. Interest in land may in certain context be defined and regarded as land but where the question is whether or not land is developed it will be absurd to define land in terms of rights in and over land. Meaning of words are often governed by the occasion and circumstances.....When therefore, in para 14(1)(a) reference was made to 'land' which 'has not been developed' land there meant land in the ordinary sense and 'developed' means developed also in its ordinary meaning."*
>
> (Emphasis added)

On the other hand, in paragraph 14(1) the word "land" occurs in an entirely different context. The material part of paragraph 14(1) reads thus :

> *"The state undertakes to continue to consider all applications made.....by a person whose land was compulsorily acquired under the Lands Acquisition Act, 1977..... ."*

Section 2(1) of the Land Acquisition Act defines "land" as follows :

> *"Land includes an interest in land and buildings on land"*

By definition therefore, "land" has been given an extended meaning. Thus it is clear that the word "land" occurs in the context of the Lands Acquisition Act, 1977 and it is logical to interpret the word "land" as including an interest in land. It is a rule of interpretation that a word takes its meaning and content from the context in which it is found.

Maxwell on ***Interpretation of Statutes*** 11th Edition at page 312 states:

> *"The same word may be used in different senses in the same statute and even in the same section.*
>
> (Emphasis added)

The dicta of Lord Blackburn in ***Edinburgh Street Tramways Co v Torbain*** (1877) 3 Appr Cas 58,68 cited by the Court of Appeal in *Port Glaud Development Co Ltd v AG and Port Glaud Hotel Development Ltd* (Supra), have a direct bearing on this rule of interpretation.

> *"Words used with reference to one set of circumstances may convey an intention quite different from what the self-same set of words used in reference to another set of circumstances would or might have produced."*

We are therefore of the view that the word "land" in paragraph 14(1) includes leasehold interest in land, We are accordingly unable to accept the submission of the learned Attorney General.

For these reasons we allow the appeal and quash the judgments of Justice Juddoo and Justice Karunakaran. We hold that the appellants are entitled to judgment in terms of paragraphs (a) and (b) of the prayer to the petition set out at the commencement of this judgment. The appellants are also entitled to the costs of appeal payable by the 1st respondent.

E.O.AYOOLA	**A.M.SILUNGWE**	**G.P.S.DE SILVA**
PRESIDENT	**JUSTICE OF APPEAL**	**JUSTICE OF APPEAL**

Dated at Victoria, Mahe this 12th day of April 2001