(9)

IN THE SEYCHELLES COURT OF APPEAL

ALFRED HUGO KURT LEITE **APPELLANT**

VERSUS

THE REPUBLIC **1ST RESPONDENT**
THE ATTORNEY GENERAL **2ND RESPONDENT**

Civil Appeal No. 10 of 2002

[**Before:** *Ayoola P, Silungwe & Pillay JJA]*

Mr. P. Pardiwalla for the Appellant
Mr. R. Govinden for the Respondents

JUDGMENT

(Delivered by Pillay, JA)

This is an appeal against a decision of the Constitutional Court of Seychelles which held that the intended compulsory acquisition of the appellant's property, namely V5126, by the first respondent did not contravene nor was likely to contravene the appellant's constitutional right to property guaranteed under Article 26 of the Constitution of Seychelles.

The grounds of appeal challenging the decision of the Constitutional Court are as follows:-

1) *The Learned Judges' finding that there is no other suitable land for the construction of houses is not supported by the available and admissible evidence in the case.*

2) *The Learned Judges erred in taking judicial notice of the following:*

   i) that "buildable land is scarce and infrastructure development is vast and fast" in Seychelles (Karunakaran J with Juddoo J concurring)

ii) that "the amount of the buildable land is limited in relation to the social and economic needs of the community, so much so that the State has undertaken extensive land reclamation projects at considerable expense" (Perera J with Juddoo J concurring).

3) *The Learned Judges misconstrued section 3(1) of the Acquisition of Land in the Public Interest Act and article 26(3) (a) and (b) of the Constitution and, therefore, were wrong in concluding that providing housing for 36 families was in the public interest.*

4) *The Learned Judges erred in their conclusion that there was reasonable justification for causing hardship to the Petitioner inasmuch as:*

   a) *they applied the wrong test in determining whether there was reasonable justification for causing any hardship to the Petitioner.*

   b) *in any event, the available evidence does not support their finding that there was no other suitable land for housing development.*

5) *The Learned Judges were wrong to find that the intended acquisition was not politically motivated inasmuch as the Petitioner's evidence in support of such an allegation was not rebutted.*

At the hearing of the appeal, learned counsel for the appellant conceded that there was no evidence which had been adduced by the appellant to show that the intended acquisition of the property by the first respondent was politically motivated and made in bad faith. Consequently we do not have to examine the fifth ground.

With regard to the second ground of appeal, we can easily dispose of the first limb since the learned Judge took into account well-known facts, namely that buildable land is scarce and infrastructure development is vast

and fast in Seychelles, *"which are of a quite general character"* – vide; **Phipson on Evidence** (14th Edition) page 31 at paragraph 2-09.

The statement in the second limb of the second ground, however, falls into a different category and does not contain well-known facts of which judicial notice could be taken, the more so as those facts were not in issue and were not canvassed or commented upon in Court by counsel. In any event, the facts contained in the second ground of appeal have, as we shall see, no bearing on the outcome of this appeal.

With regard to the first ground of appeal, it is true that Karunakaran J. made an erroneous finding of fact when he stated in his judgment that, on the strength of the appellant's own affidavit, there was no suitable land near the appellant's land for housing development in the district of Les Mamelles when in his affidavit the appellant had specifically stated that there was suitable land around his property which was better suited to the alleged housing project of the first respondent, namely Parcel V7117.

The immediate question which calls for our consideration and decision is whether parcel V7117 was really better suited than the appellant's parcel for the housing project of the first respondent.

From a perusal of exhibit 10 which was produced by the appellant, we can see without any difficulty that the appellant's land, namely parcel V5126 is more proximate to the existing housing project of the first respondent than V7117. This is confirmed by the defence of the second respondent and the affidavit in support of Mr. Cadence who stated that parcels V10545, V8351 and V4480 in the vicinity of the appellant's property which belong to the first respondent had already been developed to their maximum capacity to provide housing accommodation to the residents of Les Mamelles. It is true that there followed a non-sequitur, namely *"the Government does not own parcel*

V7117" whereas he could have added in unequivocal terms that parcel V7117 was not considered as it was not proximate to the existing housing project of the first respondent.

In any event, when we examine section 3 (1) of the Acquisition of Land in the Public Interest Act (the Act) which reads as follows:-

> *"Where the Minister is of the opinion that it is necessary to acquire any land in the public interest and that there is reasonable justification for causing any hardship to any person who has an interest in the land, the Minister may, subject to subsection (2), acquire that land in accordance with this Act"* (the emphasis is ours),

it is clear that the Minister of Land Use and Habitat (the Minister) has a discretion to choose which of the two parcels of land available, namely parcels V5126 and V7117, is necessary to be compulsorily acquired and we cannot say that his decision to choose V5126 is so perverse that no reasonable person could have taken such a decision, the more so since the evidence on record shows that parcel V5126 was more poximate to the existing housing project on parcels V10545, V8351 and V4480 belonging to the first respondent than to parcel V7117. So much for the first ground.

We turn now to the third ground of appeal. Article 26(3) (b) of the Constitution of Seychelles provides that *"the compulsory acquisition or taking possession is necessary in the public interest for the development or utilisation of the property to promote public welfare or benefit"*.

Moreover, according to section 2 of the Act, *"acquire in the public interest"* means the acquisition or taking possession of land for its development or utilisation to promote the public welfare or benefit.

In the light of those two definitions, we agree with Learned Counsel for both respondents that if the purpose of the acquisition of the appellant's land, namely parcel V5126, is to promote the public welfare or benefit, the acquisition will be deemed to be in the public interest.

The uncontested evidence or record is to the effect that a housing development is to be built on parcel V5126 and will cater for 36 housing units in Les Mamelles district which received some 276 applications for housing assistance and is one of the districts which has a large demand for such assistance.

Consequently, as rightly found by the Constitutional Court, the intended acquisition of the appellant's land by the first respondent is in the public interest as it is being used to promote the public welfare or benefit of some 36 families, the more so, in the light of the constitutional right of every citizen of Seychelles, *"to adequate and decent shelter"* and the corresponding duty of the first respondent *"either directly or through or with the co-operation of public or private organisation to facilitate the effective realisation of this right"*.

With regard to the remaining ground of appeal which questions the finding of the Constitutional Court that there was reasonable justification for causing hardship to the appellant, the evidence on record shows:-.

(1) the Minister had a discretion and chose the appellant's land because it was more proximate to the housing development already existing on parcels V10545, V8351 and V4480 than to parcel V7117, as indicated already;

(2) the Minister has a constitutional duty to provide adequate social housing to the needy and those in need of shelter. 36 families could be housed on the housing development proposed to be built on the appellant's land, as mentioned already;

(3) some hardship would be caused personally to the appellant in that he would be forced against his will to part with 37.65% of his property but he would still be left with some 2½ acres or 9889 square metres of land which should be more than sufficient for his needs and those of his family, given that land bank plots are of some 500 to 1000 square metres, depending on the topography of the land.

When the three factors mentioned above are weighed in the balance, it is clear that the finding of the Constitutional Court that there is reasonable justification for causing some hardship to the appellant who owns parcel V5126, the subject matter of the intended compulsory acquisition by the first respondent cannot be impeached.

For the reasons given, we affirm the unanimous decision of the Constitutional Court and dismiss this appeal with costs.

Delivered at Victoria, Mahe, this 16 day of *April* 2003