

IN THE SEYCHELLES COURT OF APPEAL

[Coram: F. MacGregor (PCA), M. Twomey (JA), F. Robinson JA

Civil Appeal SCA 09/2017

(Appeal from Supreme Court Decision MC 66/2012)

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| Ina Laporte | 1st Appellant |
| Barnet Fanchette | 2nd Appellant |
| Yardley Monnaie | 3rd Appellant |

Versus

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| The Ministry of Land Use and Housing | Respondent |
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Heard: 09 August 2019
Counsel: A. Amesbury for Appellants
J. Chinnasamy for Respondent

Delivered: 23 August 2019

JUDGMENT

M. Twomey (J.A)

Background to the Appeal

[1] The Appellants applied for the judicial review of the decision of the Minister of Land Use and Housing (the Respondent) to acquire land in La Digue under the provisions of the Acquisition of Land in the Public Interest Act (hereinafter the Act).

[2] They claimed that by a notice in the Official Gazette of 12 June 2012, the Government indicated its intention to acquire five parcels of land, namely parcels LD 1812, LD 1813, LD 1814, LD 1815 and LD 1816 and in accordance with the provisos of the Act gave

formal notice that it intended to treat with the owner or any person having an interest in the land and that such person should within thirty days, furnish particulars of her/his interest in the five parcels of land, the amount for which she/he would agree to sell their interest therein and to furnish the particulars of any other person who had an interest in the same. Any such person was invited to inspect a lay-out plan at the Respondent's offices.

- [3] On 3 July 2012, the First and Second Appellants indicated their interest, declaring that they were the legal and rightful owners of the five parcels of land. The Respondent wrote to the First Appellant by letter dated 6 July requesting her to provide documentation substantiating her claim of interest in the land and the price at which she was willing to sell the interest. The First Appellant responded with a copy of what she alleged was her title deed and a survey report and indicated her interest in the land.
- [4] Notwithstanding, the Respondent by a notice in the Gazette dated 6 August 2012 declared the land acquired in the public interest for housing and land bank development.
- [5] Aggrieved, the Appellants initiated proceedings for judicial review claiming that they had inherited the land from one Celestin Monnaie, the son of Jean Laporte who had held title to the land in 1808 and which he had passed to his heirs, namely the First Appellant and others represented by the Second and Third Respondents as executors of the estate of Celestin Monnaie.
- [6] The grounds for the Appellant's petition for judicial review were that by proceeding directly to formal acquisition without fully canvassing the views of the executors, heirs and successors to the estate of Celestin Monnaie, the actions of the Respondent amounted to a material irregularity. In so doing, three hundred individuals were deprived of their rights of inheritance and property since they were not allowed to fully state their objections. The Respondent knowing their interest, favoured the general public interest over theirs. This they submitted, amounted to the Respondent acting ultra vires, illegally, unreasonably and contrary to the rules of natural justice. They therefore prayed for the Court to exercise its supervisory jurisdiction to review the decision of the Respondent to acquire the land.

- [7] There then followed protracted proceedings in the Supreme Court, with inter alia the First Appellant attempting to withdraw and then being persuaded to remain as a party to the proceedings; an intervener attempting to be a party to the proceedings and failing in this endeavour; and objections from the Respondent to the originating petition on the grounds that the documentation disclosed did not support the Respondents' interest in the land and did not substantiate their title to pursue the matter.
- [8] The Court's focus moved therefore, from one of judicially reviewing the Respondent's decision to one of ascertaining whether the Appellants had sufficient standing to bring the suit.
- [9] In a decision delivered on 6 March 2017, the Supreme Court found that the Appellants had been unable to substantiate their claim to Titles LD 1812 - LD16 and that the said land belonged to third parties, whose titles were confirmed by sale agreements, transcription of deeds, survey plans and registration of the surveyed land in the Registry of Land. The court found therefore, that the Appellants had no right, title or interest in the land they claimed ownership of and that they had no personal interest or interest as executors in the matter. Further, the court concluded that they were unable to demonstrate a public interest element in the matter.

The grounds of Appeal

- [10] Aggrieved, the Appellants have now filed eleven grounds of appeal running to four pages. We have to point out at the outset that these grounds are written in opaque and infelicitous language – one ground even goes so far as to ask a question (namely ground 10 - How can the acquired parcels have been owned by Charles Burman and Diana Taylor?). The Court of Appeal Rules and Practice Directions have emphasised the necessity of drafting clear and concise grounds of appeal. More is not necessarily better. In this context, energy was expended with futility by the Appellants as we will not be considering the grounds that are repetitive, nonsensical, meaningless.

[11] We find three meaningful grounds raised which we summarise as follows:

[1] The learned judge erred in holding that the decision to be reviewed was that of the Government of Seychelles through its department and not the Minister.

[2] The learned judge erred in finding that the Appellants did not hold an interest in the land acquired by the Respondent.

[3] The learned judge erred in finding that in any case the Appellants' claim was prescribed.

Ground 1- the decision being reviewed

[12] It is the Petitioners' submission that the learned trial judge erred in stating that the Appellants had petitioned the court for a review of the Government's decision when they had sought to review the Minister's decision.

[13] We need not waste too much time to dispose of this ground as it hardly addresses any substantive legal issue in the appeal as rightly pointed out by Learned Counsel for the Respondent. The Government has collective responsibility for its Ministers. Section 22 of the Interpretation and General Provisions Act defines the word Minister as "...a Minister of the Government appointed under section 26 of the Constitution".

[14] Moreover, section 29(1) of the Seychelles Code of Civil Procedure, (hereinafter the SCCP) provides in relevant part:

"All claims by the Government of Seychelles against any private person shall be brought in the name of the Attorney General and (subject as hereinafter provided) shall be carried on in the same manner in every respect as suits between private parties."

It is therefore trite that the collective responsibility for the Minister's decision lies with the Government and ultimately the Government can be sued in the stead of the Minister and similarly for the review of any decision by the Minister. We therefore see no merit in this ground.

Ground 2 – the Appellants’ interest in the land acquired

- [15] The Appellants’ submissions are to the effect that their interest in the land is proved by reference to the documentary evidence of the concession granted to one Jean Laporte in 1808 of 108 arpents (for the purposes of the proceedings referred to as Lot 8). Each of his three sons namely, Jean-Baptiste Laporte, Venan Florentin Laporte and Joseph Celestin Laporte inherited 36 arpents of his land. The Appellants claim title through one of these brothers namely, Joseph Celestin Laporte who was allocated Sub Lot 2 of Lot 8 in a partition. It is their submission that although the latter made a will in 1845 in which he bequeathed his land to his son Celestin Monnaie and Laure Monnaie, his son’s mother, he survived until 1864 having sold his land in 1854 to his son and Laure Monnaie. In any case on Laure Monnaie’s death, Celestin Monnaie became the sole owner of the 36 arpents. This they submit, proves the Appellants’ interest in Parcels LD 1812 – LD 1816. The Petitioner’s narrative as to their interest in the said land ends with Celestin Monnaie’s acquisition of these 36 arpents. In this respect they show an almost wilful naivety and ignorance of the law. In any case it certainly does not establish any of their interest in the land at issue.
- [16] When the Respondent submitted that third parties (namely Charles Burman and Diana Taylor (Purchasers) owned Parcels LD1812- LD1816 before its compulsory acquisition by the Respondent and traced their root of title to Celestin Monnaie who sold any land he still owned to R. G. Naidoo in 1920 and who sold the same to Benjamin Camille and Edith Leona Monchouguy in 1944; who in turn sold the same to Charles Burman and Diana Taylor in 1972, their response was that that was not possible as the partition of land in which Celestin Monnaie had an interest was carried out in 1915 whereas the said Celestin Monnaie had died in 1904.
- [17] We have assiduously examined the documents submitted to the court *a quo*, namely the transcriptions of deeds from the Register of Deeds and Transcriptions (of the Old Land Register) and survey reports. We find that a concession of land namely 108 arpents in la Digue was granted by Commandant Queau de Quinssy on 1 November 1808 to Jean Laporte. This is supported by the deed in Exhibit LAP 3 (a) and the survey reports of

Louis Mondon dated 26 April 1808 kept in Tin Boxes 4 and 8 of the Colonial Records. Jean Laporte had three sons and after his death a *partition* of his 108 arpents took place on 1 October 1837 (See Exhibit LAP 7). Three lots of 36 arpents of this land were drawn and each son allocated one lot. Joseph Celestin Laporte was allocated Sub Lot 2 of Lot 8. He had one son, Celestin Monnaie (Snr), who inherited or bought these 36 arpents together with his mother. After she died, he became the sole owner of these 36 arpents.

- [18] Celestin Monnaie (Snr) sold 3 of these 36 arpents to Eliane Marthe Monnaie on 15 November 1901 as confirmed in the Register of Transcriptions in Volume 15 Number 167 and in the survey report of Surveyor Gilbert Ah-Yave of 1971 and registered as LD17 and as confirmed in the Arbitration Report by Yvon Savy submitted to the Court in Ex Parte 65/1973.
- [19] In 1904 Celestin Monnaie (Snr) died leaving 9 heirs. His remaining 33 arpents was subject to a *partition* in 1915 transcribed in the Register of Transcriptions in Volume 22 No 417. In that partition, 8 lots were drawn: Lot 7 (comprising 6 arpents) was allocated to Celestin Monnaie (Jnr) his youngest son. Celestin Monnaie Junior sold Lot 7 to Rajgopal Naidoo on 4 December 1920 which sale was transcribed in the Register of Transcriptions in Volume 54 No 197. Mr. Naidoo in turn sold the 6 arpents to Benjamin Camille and Edith Leona Monchouguy on 24 October, 16 and 17 November 1944 transcribed in the Register of Transcriptions in Volume 37 No 117. He subsequently sold the land to Charles Burman and Diana Taylor on 29 June 1972 as transcribed in the Volume 54 No 197.
- [20] The application of appointment of executors to the estate of Celestin Monnaie (Snr) estate in CS 147/2010 which was granted on 7 February 2011 was misconceived and entirely futile as his estate had already been distributed among his heirs in the 1915 *partage*.
- [21] With regard to the compulsorily acquired parcels of land, namely Parcels LD 1812- 1817 and whether they match and can be equated with Lot 7, the evidence on this issue submitted by the Respondent was in our view rightly accepted by the trial judge.

- [22] There is no doubt from the survey reports and diagrams submitted by the Respondent that the current surveyed land namely Parcels LD 1812 – LD1816 excised from Parcel LD1872 which were at the time of the compulsory acquisition registered in the name of Charles Burman and Diana Taylor are contained in the original Lot 8 conceded to Jean Laporte in 1808. The rest of Parcel LD1872 are still registered in the name of Charles Berman and Diana Taylor
- [23] In the transcriptions submitted to the court as outlined above, the deed of sale between Charles Berman and Diana Taylor contains a description of the property they purchased from Benjamin Camille. This description matches the description of Lot 7 (6 arpents) which Celestin Monnaie (Jnr) sold to Rajgopal Naidoo. Likewise, the surveys plans prepared by Surveyor Dennis Barbé (See I4 of the Transcript of Proceedings) dated 22 January 2008 and 20 November 2014 (show the locations of Parcels LD 812 – LD 816 matching these descriptions and located within the area of the original Lot 8 conceded to Jean Laporte in 1808.
- [24] Berman’s land was surveyed in two lots - the western part in 1981 which was approved in 1983 and designated as LD290. This was compulsorily acquired by the government in 1992. The eastern part was surveyed in 2005 and the survey approved in 2008. Some of these surveyed plots were given the designation LD1812 to LD1816.
- [25] We find no fault therefore with the trial judge’s finding that the whole interest of Celestin Monnaie was conveyed eventually to Charles Berman and Diana Taylor.
- [26] The Appellants’ submission that the ownership of land in La Digue has not been adjudicated and therefore the court cannot have certainty that the acquired parcels of land were included in the land and estate of Celestin Monnaie is a double edged sword that does not advance their case in establishing an interest in the land acquired but is also of course completely flawed. Ownership of land which is yet to be registered in the New Land Register under the Land Registration Act can be established in two ways – either by adjudication of title triggered by the government, pursuant to section 4 of the Adjudication of Title Decree 1979, or by the voluntary survey of the land by its presumed owners or prospective purchasers and its registration. The 1979 Decree provided for the

adjudication of ownership of land in their transfer from the Old Land Register (under the Mortgage and Registration Act) to the New Land Register (the Land Registration Act 1967). It was confirmed that Parcels LD1812 –LD 1816 were surveyed. The Land Survey Act 1964 provides for notice to third parties in the Official Gazette of completed surveys. No objections were lodged to the surveys of the five parcels and so the surveys were approved and registered. In this regard, adjudication is exempted under section 3 of the Adjudication of Title Decree 1979.

[27] The Appellants have no interest whatsoever in Parcels LD 1812, LD 1813, LD 1814, LD 1815, LD 1815 LD 1816. They therefore had no standing to bring the petition for judicial review. In the circumstances the decision of the Minister did not require the scrutiny of the Supreme Court. This ground of appeal had absolutely no merit and is dismissed.

Prescription of the action relating to ownership

[28] Whether the Petitioner’s action was prescribed or not has in the light of the above now become a purely academic exercise. It is of course correct that the court pursuant to Article 2223 cannot of its own volition raise prescription of an action. However, the learned trial judge’s reference to it was an aside relating to proof of ownership and had no significance to the case which was one of judicial review of the Minister’s decision.

[29] The Petitioner’s reliance on section 2 (1) of the Clarification of Titles to Land (Deeds of Concession) 1961 is also misconceived. These provisions apply subject of course to the alienation of title as has been clearly demonstrated by the deeds of sale to Messrs. Naidoo, Camille and subsequently to Berman and Ms. Taylor.

[30] The appeal fails in its entirety. The Respondent is awarded costs.

M. Twomey (J.A)

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| I concur:. | | F. MacGregor (PCA) |
| I concur: | | F. Robinson (JA) |

Signed, dated and delivered at Palais de Justice, Ile du Port on 23 August 2019