

IN THE CONSTITUTIONAL COURT OF SEYCHELLES

[Corum: D. Karunakaran J. (Presiding), B. Renaud J., G. Dodin J.]

CP4 /2012

[2016] SCCC 9

ROBERT NELSON POOLE

Petitioner

versus

GOVERNMENT OF SEYCHELLES

and

ATTORNEY GENERAL

and

PHARA SOPHIA NODDYN

(Executor of late Robert Louis Noddyn)

and

REEM LIMITED

(A company represented by Gilbert Rassool a Director)

Respondents

Heard: 20 and 27 October and 10 November 2015

Counsel: F. Boulle for petitioner

C Jayaraj for respondent

Delivered: 17 May, 2016

JUDGMENT ON PETITION

- [1] The Court of Appeal in its judgment dated 17th April, 2015, made the following orders with respect to this case:

“...we allow the appeal on the preliminary objections raised by the Respondents in the court below which fore-stalled the further hearing of the petition. We order that the Constitutional Court proceeds to hear the matter on the merits.”

- [2] The merits of this case can be briefly summarised as follows: The Petitioner was the owner of land parcel T 627 situated at Anse Gaulettes, Mahe, which was compulsorily acquired by the Government under the Land Acquisition Act 1977 on the 1st October, 1983. On the 1st October, 1993, the Petitioner applied under the provisions of Part 111 of Schedule 7 of the Constitution for the return of the land and for compensation for any portions that cannot be returned. Since then negotiations and legal actions have protracted without any solution to the Petitioner’s claim until the above determination by the Court of Appeal.

- [3] In this petition the Petitioner prays for an order ordering the 1st Respondent to:

- i. Return and transfer to the Petitioner the parcels of land registered as Titles Number. T-3161, T-3160, T-3159, T-2102, T-3095, T-3107, T-1855, T-1052, T-2839, T-767 and T-3094.
- ii. Order the 1st Respondent to pay compensation to the Petitioner for all land that cannot be returned to the Petitioner at current market value as set out in paragraph 27 of the Petition.

- [4] During the course of proceedings parcels T-3160, T-3159, T-1052 and T-2839 were returned to the Petitioner which leaves the Court to make determinations on the remaining parcels: T3161, T2102, T3095, T3107, T1855, T767 and T3094.

- [5] The 1st Respondent objects to the return of the remaining parcels on the following grounds.

- i. Parcel T3161 has been developed into a social housing estate, public infrastructure and sewerage plant. The remainder is to be returned to the Petitioner after excising the area as stated.

- ii. Parcel T3095, has a plan approved in 2010 by the planning authority for developing this parcel as a Beach Park with toilets and kiosks. There is also an ongoing periodical activity known as Bazaar O Van which takes place there.
- iii. Parcel T-3107 has a public bus stand. This parcel is also covered by the planning approval given in 2010.
- iv. Parcel T-2102 has been developed into a mini stadium with a playground and other facilities for public use.
- v. Parcel T-1855 has been leased out and in possession of a 3rd party. This land will be returned as soon as the 1st Respondent retakes possession of the same for which steps are under way.
- vi. Parcel 3094 is not developed but is in the hands of a third party.

[6] Before we go to the issue of compensation, we shall determine which parcels should be returned to the Petitioner so that we shall determine the quantum of compensation for only parcels that cannot be returned.

[7] Part 111 of the Schedule 7 to the Constitution states as follows:

“PART III - COMPENSATION FOR PAST LAND ACQUISITIONS

Past Land Acquisition

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;

(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 to the person;

(c) where the land cannot be transferred back under subsubparagraphs (a) or subsubparagraph (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 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) up to 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.*
- (3) No interest on compensation paid under this paragraph shall be due in respect of the land acquired but Government may, in special circumstances, pay such interest as it thinks just in the circumstances.*
- (4) Where the person eligible to make an application or to receive compensation under this paragraph is dead, the application may be made or the compensation may be paid to the legal representative of that person."*

[8] As stated in the case of *Lise Morel Du Boil v Attorney General and Josephine Maryse Berlouis CP10 of 2011*, the critical provisions in this Schedule which govern the issue under consideration by the Court are:

- (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;*
- (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 to the person;*
- (c) where the land cannot be transferred back under subsubparagraphs (a) or subsubparagraph (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 full monetary compensation for the land acquired;*
or
 - (iii) as full compensation for the land acquired, devising a scheme of*

- [9] Clearly the operating date to determine whether the land has been developed or has a plan for development is the date of application for the return of the land. However, the Court can determine that land developed after the application cannot be return in exceptional circumstances, being that the development was necessary and in the public interest for which the return if ordered would be highly prejudicial to the public in addition to the balance of convenience and benefits favour the public interest. Transferring land that has not been developed to a 3rd party is not permitted under the provisions of the schedule. Therefore it follows that the arguments of the 1st Respondent to that effect must fail.
- [10] This extract from the case of Lise Morel Du Boil v Attorney General and Josephine Maryse Berlouis [supra] is also true for the position of parcels T767, T3094 and T1855.

“In our considered opinion however, even if we were to accept that the Intervener (in this case the current title holders of titles T767, T3094 and T1855) was a bona fide purchaser for value, her claim only amounts to a civil law claim which should be pursued in the Civil Court and in our considered opinion such claim cannot defeat the Petitioner’s constitutional right under Article 26 of the Constitution. Furthermore, Schedule 7, Part 111 only makes exception to land that has been developed or where there is a plan to develop and such development must be in the public interest. Transferring the undeveloped land to a private individual after a claim has been made for its return is not in the public interest and is not an exception under Schedule 7, Part 111”.

- [11] Consequently we make the following determination with respect to parcels which should be returned to the Petitioner:
- i. Parcel T767 has a house on it built by the Petitioner prior to its acquisition. There is no evidence of any other development or plan to develop the land after acquisition. We determine therefore that the parcel should be returned to the Petitioner. The Registrar of Lands shall register the Petitioner as the owner of the land. We so order.
 - ii. Parcel T3095. We find that the parcel is not developed and the plan for development was put together way after the Petitioner had claimed the return of the parcel. Just holding of leisure activities

occasionally is not sufficient to amount to development. We determine therefore that the parcel should be returned to the Petitioner. We so order.

- iii. Parcel T1855 has been leased to a 3rd party. We find that it is not necessary to wait for the lease to be transferred to the 1st Respondent before it can be returned to the Petitioner. We find that the Registrar of Lands can cancel the registration of the lease and the land shall then be transferred to the Petitioner. We order accordingly.
- iv. Parcel T3094 has also been transferred undeveloped to a third party. We determine that the land should be returned to the Petitioner. We order the Registrar of Lands to register the Petitioner as the owner of the land.
- v. Parcel T-3107 has a public bus shelter and a development plan approved in the year 2010. We determine that the bus shelter is a necessary development and in the public interest. The remainder of the parcel should be returned to the Petitioner for the same reasons as parcel T3095 after extraction of the bus shelter.
- vi. Parcel T2102 has been developed into a mini stadium and playground with public facilities. We determine that the development was in the public interest and very beneficial to the community. We therefore find that the parcel should not be returned and that compensation be paid instead.
- vii. Parcel T3161 has been developed into a social housing estate with public infrastructure and sewerage plant. We determine that the developments of parts of the parcel were in the public interest. We order that the developed portions of the parcel be retained by the 1st Respondent in return for compensation. The remainder is to be returned to the Petitioner after excising the areas as stated. The extraction shall cover the 68 plots already developed and transferred as well as the sewerage and water facilities and access roads and the portions not yet allocated parcel numbers upon which construction has been completed.

[T1356, T1074, T1079, T1078, T1415, T1414, T1357, T767, T795, T1456, T1455, T1453, T1452, T1940, T1939, T1924, T1849, T1639, T2035, T2032, T1955, T1953, T1952, T1951, T1450, T1949, T1948, T1947, T1946, T1945, T1944, T1943, T1942, T2840, T2476, T2474, T2472, T2477, T2478, T2465, T2464, T2297, T2296, T2295, T2294, T2293, T2292, T2291, T2290, T2289, T2287, T2286, T2285, T2283, T2160, T2163, T2114, T2036, T1954, T1950, T2475, T2288, T3494, T3589,

- [12] We now turn to the issue of compensation for the land that will not be returned. Learned counsel for the Petitioner submitted that compensation for the land that are not being returned should be calculated on the basis of current market value whilst learned counsel for the 1st and 2nd Respondents submitted that such calculation should be based on 1993 value. Both submitted valuation reports in support of their respective submissions and in line with their respective contentions. It was hoped that the decision on the same issue by the Court of Appeal in the case of Charles Alfred Moulinie v Government of Seychelles and Attorney General CP No 11 of 2011 would settle that issue once and for all. Whilst the Court of Appeal comprehensively rejected the basis for calculating compensation at 1993 value, it also did not entirely adopt the current commercial valuations placed before it. The Court of Appeal determined as follows:

“What remains now is the issue of settling the quantum. This may only be effected on the evidence available. Unfortunately for us, while the evidence ushered in by the appellant is for the current market value: i.e. SRs52,316,451.00, that ushered in by the respondent is as at 1993: i.e. SRs4,584,600.00. To refer the case back to the Supreme Court would unduly protract the disposal of this case.

We should think there have been complications regarding the choice of the system for the previously proposed determination of quantum: i.e. Ad Hoc Administrative Tribunal, exchange of expert reports, mediation etc. Accordingly, we shall take it upon ourselves.

We use our powers under the Rules of the Court of Appeal and invite a report from a panel of three experts on the matter. This panel to comprise Ms Sabrina Zoe, for the Respondent, Mr Hubert Alton for the Appellant and another expert appointed by the Court: namely, Mr Daniel Blackburn.

This panel should strive to produce a joint report for the benefit of the court on the fair market value of the property as at the time of the claim. This report should reach us by mid July for disposal of this case in the August session. Any procedural issue arising in the process shall be resolved before the President of the Court of Appeal.”

- [13] We shall adopt the same approach to determine the compensation to be paid for the land that are not being returned. We invite a joint report from a panel of three experts on the matter. This panel shall comprise Mrs Sabrina Zoe, for the 1st Respondent, Mr Hubert

Alton for the Petitioner and another expert appointed by the Court: namely, Mr Daniel Blackburn.

[14] This panel should strive to produce a joint report for the benefit of this court on the fair market value of the property as at the time of the claim. This joint report should reach us before the last week of July 2016 for disposal of this case by the last session of this term. Any procedural issue arising in the process shall be resolved by this Constitutional Court panel.

[15] In summary, we enter judgment by making the following orders:

- i. Parcel T767 is returned to the Petitioner;
- ii. Parcel T3095 is returned to the Petitioner;
- iii. Parcel T1855 is returned to the Petitioner
- iv. Parcel T3094 is returned to the Petitioner
- v. Parcel T-3107 is returned to the Petitioner after extraction of the bus shelter which shall not be returned and compensation shall be paid instead for the extracted part.
- vi. Parcel T2102 shall not be returned to the Petitioner and compensation shall be paid instead.
- vii. Parcel T3161 shall be returned to the Petitioner after extraction of the developed portions of the parcel retained by the 1st Respondent or developed and transferred to individuals on the housing estates.
- viii. The panel of expert named above shall produce to this Court a report on the fair compensation to be paid for the portions which are not being returned before the last week of July.
- ix. The 1st Respondent shall have 30 days to complete the transfer of the portions of land under its ownership which have been ordered to be returned to the Petitioner.
- x. The Registrar of Lands shall have 30 days to register parcels which have been ordered to be returned but which have been transferred to 3rd parties and shall cancel the lease on T1855 within 21 days of today.

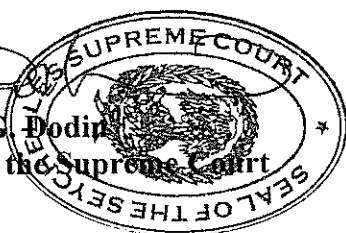

[16] We award costs to the Petitioner.



D. Karunakaran
Judge of the Supreme Court
Presiding



B. Renaud
Judge of the Supreme Court



G. Dodipati
Judge of the Supreme Court

Signed, dated and delivered at Ile du Port on 17th May, 2016.