

CONSTITUTIONAL COURT OF SEYCHELLES

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**Reportable**  
[2021] SCCC01  
CP 08/2018 & CP 01/2019

In the matter between:

**PHILIPPE JUMEAU**  
*(rep. by Wilby Lucas)*

**Petitioner**

and

**THE GOVERNMENT OF SEYCHELLES**

**1<sup>st</sup> Respondent**

**ATTORNEY GENERAL**

**2<sup>nd</sup> Respondent**

*(both rep. by Jayaraj Chinasamy)*

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**Neutral Citation:** *Jumeau v Government of Seychelles & Anor* (CP 08/2018 & CP01/2019)  
[2021] SCCC 01 (13 April 2021).

**Before:** R. Govinden CJ, M. Vidot, E. Carolus JJ

**Summary:** Compulsory acquisition of land – Part III of Schedule 7 to the Constitution

**Heard:** 5 November 2019

**Delivered:** 13 April 2021

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**ORDER**

The first Respondent is to pay full monetary compensation to the petitioner for the compulsory acquisition of parcels J320, V370, V375 and V1970 in the total sum of Seychelles Rupees Thirty Million Seven Hundred Thousand Two Hundred (SCR30,700,200.00) with costs.

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**JUDGMENT**

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**CAROLUS J (GOVINDEN CJ & VIDOT J concurring)**

## **Background**

[1] This Judgment arises out of two Constitutional petitions CP 08/2018 and CP 01/2019, filed by the petitioner after he had failed to obtain satisfaction pursuant to his applications to Government under Part III of Schedule 7 to the Constitution seeking remedies for past land acquisitions. CP 08/2018 concerns the compulsory acquisition of parcel J320 situated at Port Glaud, Mahe, and parcels V370 and V375 situated at Beau Vallon, Mahe, while CP 01/2019 concerns the compulsory acquisition of parcel V1970 situated at Mont Fleuri, Mahe. The petitioner and respondents in both constitutional petitions are the same, Mr. Philip Jumeau being the petitioner, the first respondent being the Government of Seychelles and the Attorney General being cited as second respondent in accordance with Rule 3(3) of the Constitutional Court (Application, Contravention, Enforcement or Interpretation of the Constitution) Rules, 1994 (“the Rules”). The Court being of the view that it would be for its convenience and that of the parties that the two petitions be consolidated, due to the similarity of their subject matter and the identity of the parties, directed that the petitions be consolidated and be treated as one pursuant to Rule 11 of the Rules.

### *The Petitions*

- [2] Both petitions are supported by affidavits sworn to by the petitioner and relevant documents relating thereto.
- [3] It is averred in the petitions and supporting affidavits that the petitioner was the registered proprietor of all four land parcels subject matter of the consolidated petitions before this court, which were compulsorily acquired by the Government under the Land Acquisitions Act 1977.
- [4] The petitioner avers that parcel J320 of 12,107 square metres, with no infrastructure or building thereon, and situated at Port Glaud, Mahe, was compulsorily acquired on 4<sup>th</sup> July 1981 (CP 08/2018). The declaration of the compulsory acquisition was registered on 23<sup>rd</sup> September 1983 and transcribed in Vol 70 No. 1219 and Repertory Vol 32 at page 72. Parcel J320 was transferred by the first respondent to the National Council for Children

by deed of transfer dated 21<sup>st</sup> May 1986. It was transformed into the existing Presidents Village.

- [5] He avers that parcels V370 and V375 measuring 7,539 square metres and 1,202.7 square metres respectively, with no infrastructure or building thereon, and situated at Beau Vallon, Mahe, were compulsorily acquired on 7<sup>th</sup> May 1985 (CP 08/2018). The declaration of the compulsory acquisition was registered on 30<sup>th</sup> September 1985 and transcribed in Vol 70 No. 1219 and Repertory Vol 32 at page 72.
- [6] Parcel V370 was subdivided into several plots which were used by the first respondent in its Land and Housing Programme.
- [7] Parcel V375 was transferred by the first respondent to the Seychelles Housing Development Corporation for a consideration of Seychelles Rupees Fifty Four Thousand (SCR54,000.00) by deed of transfer dated 2<sup>nd</sup> August 1996 and registered on 8<sup>th</sup> August 1996. The latter transferred the said parcel to Alex Port-Louis and Barbara Port-Louis for a consideration of Seychelles Rupees Fifty Four Thousand (SCR54,000.00) by deed of transfer dated 17<sup>th</sup> November 1995 and registered on 23<sup>rd</sup> August 1996. Parcel V375 remained undeveloped and was eventually transferred to Madeleine Serena Manji née Dunford by deed of transfer dated 12<sup>th</sup> July 2006 for a consideration of Seychelles Rupees Eight Hundred Thousand (SCR800,000.00).
- [8] The petitioner avers that parcel V1970 measuring 3,584 square metres with, at the time of its acquisition, a dwelling house known as Laurel Villa thereon, and situated at Mont Fleuri, Mahe, was compulsorily acquired on 7<sup>th</sup> August 1981 (CP 01/2019) purportedly “for a public purpose namely to facilitate the acquisition of Mission premises”. The declaration of the compulsory acquisition was registered on 10<sup>th</sup> September 1981 and transcribed in Vol 67 No. 183 and Registration Volume A38 No.1414. Before it was compulsorily acquired the petitioner had leased Parcel V1970 to the People’s Bureau of the Socialist People’s Libyan Arab Jamahiriya by virtue of a lease agreement dated 10<sup>th</sup> July 1981, which was to take effect on 1<sup>st</sup> September 1981. The duration of the agreement was for a period of five years and the rent fixed at a monthly sum of Seychelles Rupees Twenty Eight Thousand (SCR28,000.00). The rent for the first two and a half years was

to be paid in advance after signature of the agreement to enable the petitioner to transform the premises into embassy accommodation. Under the terms of the agreement the lessee would be entitled to purchase the premises at a sum of Seychelles Rupees Four Million Three Hundred and Twenty Thousand (SCR4,320,000) subject to Government approval and the law regulating the sale of property to foreigners.

- [9] After its acquisition in 1981 Parcel V1970 remained in the ownership of the first respondent until 1983 when it was transferred to the People's Bureau of the Socialist People's Libyan Arab Jamahiriya. It is averred that the deed effecting this transfer could not be located at the Land Registry. However, a certificate of official search dated 17<sup>th</sup> July 2017 confirms that the proprietor of the parcel is the People's Bureau of Socialist People's Libyan Arab Jamahiriya.
- [10] The petitioner avers that he was neither notified nor aware of the transfer of parcel J320 by the first respondent to the National Council for Children, the transfer of parcel V375 by the first respondent to the Seychelles Housing Development Corporation and subsequently to Alex Port-Louis and Barbara Port-Louis and eventually to Madeleine Serena Manji née Dunford, or the transfer of Parcel V1970 by the first respondent to the People's Bureau of the Socialist People's Libyan Arab Jamahiriya. He further avers that upon the coming into force of the Constitution and of Part III of Schedule 7 (Compensation for Past Land Acquisitions) thereto on the 21<sup>st</sup> June 1993, and on the dates of the said transfers his rights or claims in respect of the compulsory acquisition of parcels J320, V370, V375 and V1970 under those provisions were still pending and had not been fully and finally settled.
- [11] The petitioner avers that by effecting the said transfers of parcels J320, V370, V375 and V1970, the 1<sup>st</sup> respondent:
- (a) acted in bad faith and/or fraudulently to deny the petitioner its right to recover ownership of, and title to, parcels J320, V370, V375 and V1970;
  - (b) abused its powers and obligations under Part III of Schedule 7 to the Constitution;
  - (c) acted in contravention of Part III of Schedule 7 to the Constitution;

(d) breached the petitioner's Constitutional right to property;

[12] He also avers that the first respondent breached its Constitutional obligation under the provisions of Part III of Schedule 7 to negotiate in good faith with the petitioner to compensate him for the compulsory acquisition of parcels J320, V370, and V375 and to return Parcel V1970 to him.

[13] The petitioner further avers that the first respondent acted negligently in transferring parcels J320, V370, V375 and V1970 after the coming into force of the Constitution and before the petitioner's claim for compensation had been fully and finally settled in accordance with the provisions of Part III of Schedule 7 and thus facilitating the above mentioned transaction, acts and/or fraud to the petitioner's Constitutional rights and whilst the petitioner was trying to obtain the return of the said parcels or a fair monetary compensation.

[14] He avers that in negotiations with the first respondent for the return of parcel V1970 the first respondent offered the petitioner monetary compensation in a sum that does not reflect the market value of the said parcel as at 21<sup>st</sup> June 1993 or the current market value, which was categorically refused by the petitioner who maintained that parcel V1970 should be returned to him.

### *Remedies*

[15] The petitioner seeks a declaration that the compulsory acquisition and subsequent transfer of parcels J320, V370, V375 and V1970 by the 1<sup>st</sup> Respondent to the institutions and the persons to which they were transferred:

*(a) Is an abuse of the 1<sup>st</sup> Respondent's powers and obligations under Part III of Schedule 7 of the Constitution;*

*(b) Is in contravention of Part III of Schedule 7 to the Constitution; and*

*(c) In breach of the Petitioner's constitutional right to property.*

[16] In respect of parcels J320, V370 and V375, because in his view, the return of those parcels is not possible, the petitioner seeks compensation from the 1<sup>st</sup> respondent by the

transfer to the petitioner of corresponding parcels of land in a similar location or area; or the payment to the petitioner of full monetary compensation equivalent to the value of parcels J320, V370, and V375 at the date of the judgment or the valuation of such parcels, such valuation to be carried out by at least three (3) independent appraisers of repute.

[17] In regard to parcel V1970, the petitioner seeks the cancellation, rescission, annulment or revocation of the transfer of that parcel by the 1<sup>st</sup> respondent to the People's Bureau of Socialist People's Arab Jamahiriya, and the return of the said parcel on the basis that the 1<sup>st</sup> respondent has acted in contravention of its Constitutional obligations and/or the People's Bureau of Socialist People's Arab Jamahiriya had not developed Parcel V1970 and had no plans to develop it on the coming into force of the Constitution and immediately thereafter. In the alternative, if return or transfer of Parcel V1970 is not possible, he seeks compensation by transferring to him a corresponding parcel of land with a substantially similar building thereon and at a similar location or area, or the payment of full monetary compensation equivalent to the value of parcel V1970 at the date of the judgment or the valuation of such parcel, such valuation to be carried out by at least three (3) independent appraisers of repute to be appointed by the Court.

[18] The petitioner also prays for any orders that this Court deems fit in the circumstances of the two cases (CP 08/2018 and CP01/2019) and for costs.

#### *Respondents' Reply*

[19] Both respondents were represented by the same counsel who filed one reply on behalf of both respondents in each Constitutional petition, supported by affidavits sworn to by Mr. Ravi Valmont, Principal Secretary in the Department of Habitat of the Ministry of Habitat, Infrastructure and Land Transport. The respondents do not dispute that the petitioner was the registered proprietor of the four parcels of land in question at the time they were compulsorily acquired by the Government. It is also not disputed that after their compulsory acquisition, the said parcels were transferred as stated in the petitions but the respondents deny that the petitioner was not notified and was unaware of the transfers of the said parcels. They also deny that upon the coming into force of the

Constitution on the 21<sup>st</sup> June 1993 and on the dates of the said transfers the petitioner's right or claim in respect of the compulsory acquisition of parcels J320, V370, V375 and V1970 under those provisions was still pending and had not been fully and finally settled. They aver that the petitioner's claims or rights have been fully settled in that compensation was made for parcels J320 and V1970 by the transfer of parcel V5093 to the petitioner by a transfer deed dated 5<sup>th</sup> October 1995 as well as monetary compensation in a sum of Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00). They further aver that after receiving the title to parcel V5093 the petitioner transferred the said parcel to one Patrick Guy Mein of Les Mamelles by deed dated 27<sup>th</sup> November 1997. The respondents also aver that the claims regarding V370 & V375 have also been settled by way of monetary compensation in the sum of Seychelles Rupees Three Hundred Thousand(SCR300,000.00) in December 1993.

- [20] The respondents deny the petitioner's averments stated at paragraphs 11, 12, 13 and 14 above. They aver that they have acted in good faith throughout, while dealing with the petitioner, and paid him fair and adequate compensation agreed to by him, in accordance with and after negotiation and agreement under the provisions of Part III of Schedule 7 of the Constitution. They aver that the petitioner cannot sustain the present petition at this point in time as his claims have been fully settled and that consequently the reliefs sought by the petitioner are not maintainable as they are not valid. The respondents therefore pray for the dismissal of both Constitutional petitions.

### **Submissions of the Parties**

#### *Petitioner's submissions*

- [21] In his submissions counsel for the petitioner acknowledged that parcel V5093 was transferred to the petitioner as compensation for the compulsory acquisition of parcels J320 and V1970 from him but stated that he accepted it because he had just returned from exile, everything had been taken away from him and he was in a desperate situation. He had no other option but to accept what was offered to him which was unjust and unfair. He further stated that he eventually had to sell parcel V5093 because it was partly marshy and unsuitable for construction and that he received only Seychelles Rupees Five Hundred Thousand (SCR

SCR500,000.00) for the sale of that parcel. Until today petitioner does not have a property of his own.

[22] The Petitioner denied that any sums of money had been paid to him either in respect of parcels J320, V370 and V375 or V1970 and pointed out that no documentary evidence of the same had been brought by the respondents.

[23] He also stated that parcel V5093 did not constitute full and fair compensation for parcels J320 and V1970 as it was a vacant plot of land of only 2,530 square metres situated in the district of Les Mamelles for which the petitioner could only raise the sum of Seychelles Rupees Five Hundred Thousand (SCR 500,000.00) when he sold it. On the other hand, parcel J320 of an extent of 12,107 square meters is prime land situated close to the beach and parcel V1970 of 3,584 square meters is also located in a prime area at Mont Fleuri and at the time of its acquisition had a huge five bedroom villa thereon valued at Seychelles Rupees Four Million Three Hundred Thousand (SCR4,300,000.00).

[24] It is submitted therefore that the petitioner was not paid fair and adequate compensation as averred by the first respondent, bearing in mind the disproportionate value in the properties compulsorily acquired from him (parcels J320 and V1970) and parcel V5093 which was transferred to the petitioner as compensation therefor, which, he submits is indicative of first respondent's bad faith. Counsel submitted that the value of V5093 does not reflect the market value of parcels J320 and V1970 today. He pointed out that the value of parcel V1970 with the villa situated thereon was Seychelles Rupees Four Million Three Hundred and Twenty Thousand (SCR4,320,000.00) in 1981 as shown by the lease agreement dated 10<sup>th</sup> July 1981 between himself and the People's Bureau of the Socialist People's Libyan Arab Jamahiriya. He stated that the value of that property alone exceeds the value of parcel V5093 which is the only compensation given by the Government to the petitioner after compulsorily acquiring all four parcels subject matter of the two petitions before this Court. He also pointed out that the two other parcels namely V370 and V375 measured 7,539 and 1,202.7 square metres respectively constituted prime land at Beau Vallon.

[25] Counsel for the petitioner also addressed the Court on the circumstances surrounding the acquisition of parcel V1970. A lease agreement dated 10<sup>th</sup> July 1981 was signed between the petitioner and the People's Bureau of the Socialist People's Libyan Arab Jamahiriya for the lease of the buildings on parcel V1970 to the latter, effective 1<sup>st</sup> September 1981 for the monthly rent of Seychelles Rupees Twenty Eight Thousand (SCR28,000.00). In terms of clause (i) of that agreement the lessee would be entitled to purchase the premises subject to Government approval and the law which governs the conditions of sale to foreigners for the sum of Seychelles Rupees Four Million, Three Hundred and Twenty Thousand (SCR4,320,000.00) including tax, that price being subject to negotiation between the parties. However, on 7<sup>th</sup> August 1981, even before the lease agreement came into effect, parcel V1970 was compulsorily acquired for a public purpose, namely, to facilitate the acquisition of mission premises, and the occupants were given a short time to vacate the property. Parcel V1970 remained registered in the name of the first respondent until it was transferred to the Libyan Embassy. It is submitted that the property has never been used as an embassy and has never been developed further, and in fact the building thereon is now dilapidated and the property is abandoned. No information is available about the transfer of V1970 to the Libyan Embassy including the consideration. The only available document is a certificate of official search issued by the Land Registrar dated 17 July 2017, which shows that the People's Bureau of Socialist People's Libyan Arab Jamahiriya is the proprietor of V1970. It is submitted that at the time that the property was transferred to the Libyan Embassy the petitioner was in exile and therefore unaware of such transfer.

#### *Respondents' Submissions*

[26] Counsel for the respondents submitted that the adequacy of the compensation to the petitioner must be considered having regard to the time when the compensation was made that is, in 1995 when parcel V5093 was transferred.

[27] He admitted that negotiations between the Government and the petitioner took place between 1993 up to 1995, which culminated in the transfer of V5093 of an extent of 2,595 square metres to the petitioner on 5<sup>th</sup> October 1995 as part compensation for the acquisition of parcels V1970 and the building thereon and J320 in addition to monetary compensation of

Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00). He pointed out that by transfer deed dated 27<sup>th</sup> November 1997 the petitioner transferred parcel V5093 to Patrick Guy Mein thereby showing that he accepted the transfer of that parcel as fitting compensation for the compulsory acquisition of the aforementioned parcels. He submits that this subsequent transfer shows bad faith on the part of the petitioner who is now claiming that he was not adequately compensated.

[28] Counsel for the respondents submitted that the contention that the petitioner had no choice but to accept what he was offered is not tenable because in 1993 the situation in the country had changed and there was no longer a prevailing atmosphere of fear, which could lead landowners who felt that they were not being adequately compensated for past land acquisitions to accept compensation that they felt was not adequate. Further, if such was the case and the state was so powerful, such landowners would not even have been able to make the application. He submitted that an educated man such as the petitioner who was represented by legal counsel and had the ability and means to make a claim cannot be heard to say that he was weak *vis à vis* the first respondent who victimised him.

[29] Counsel's attention was drawn to the petitioner's letter to the first respondent dated 24<sup>th</sup> February 1994 in which he stated that parcel V5093 was only part compensation and in which he sets out three formulas as to how he wished to be compensated. He replied that this letter shows that the petitioner was not handicapped in any manner even after the letter in 1995 which set out the terms of the settlement and that he could have stated that he was accepting the property and the Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) under protest. It was therefore submitted that the petitioner had failed to prove his unequal position *vis à vis* the Government.

[30] Counsel maintains that the petitioner was compensated for the compulsory acquisition of parcels V1970 and J320 by payment of a sum of Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) and the transfer of parcel V5093 to him, which he had accepted as full and final compensation. He referred to a letter dated 25<sup>th</sup> July 1995 to petitioner's counsel at the time Mr. France Bonte, in which reference is made to a letter dated

11<sup>th</sup> July 1995, in which the petitioner had purportedly accepted the Government's offer of Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) plus the transfer of parcel V5093 as total compensation for the compulsory acquisition of parcels V1970 and J320. In that letter the mode of payment of the sum of Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) in two equal instalments is also set out. It is submitted that after that letter there was no further correspondence between the petitioner and the Government and that if the payment had not been effected one would have expected the petitioner to enquire as to why this had not been done. There being no correspondence to that effect, it must be taken that the money was paid, especially in view of the fact that parcel V5093 had been transferred to the petitioner on 5<sup>th</sup> October 1995 and subsequently transferred by the petitioner to one Patrick Guy Mein on 27<sup>th</sup> November 1997. It is submitted that both the transfer of parcel V5093 and the payment of the first instalment of Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) were done simultaneously and had been accepted by the petitioner without protest.

[31] On the issue of the formula to be adopted for determining the quantum for full compensation and the time at which the value of the land is to be taken into consideration for such determination, counsel for the respondents submitted that the value of the land in 1995 should be taken into consideration given that the petitioner has not shown any reason why the current value of the land should be taken into consideration. He further submitted that the petitioner could have contested the valuation done in 1995 if he had not been satisfied with it and informed the Government of the actual value of the land and requested payment of the balance at that time, which he did not do.

[32] In support of his argument counsel for the respondents also makes reference to the letter also dated 25<sup>th</sup> July 1995 to the Principal Secretary, Finance from Miss S. Mellie for Principal Secretary (Lands), in which it is stated that the President had approved the payment of Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) plus the transfer of parcel V5093 to the petitioner as total compensation for the compulsory acquisition of parcel V1970 (Laurel Villa) and parcel J320. The letter also requests the issue of a cheque for the sum of Rupees Seven Hundred Thousand (SCR700,000.00) for payment of the first of the

two instalments of the Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) and the waiver of stamp duty in respect of the transfer of parcel V5093 to the petitioner. Counsel submits that there is nothing to show that the offer was not made to the petitioner, that he never accepted such offer and that no such payment was made. It is also submitted that the petitioner knew very well what he was getting as compensation after two years of negotiations and accepted it. At the time he never complained about the bad faith of the first respondent which is only being raised now. Further, the petitioner was represented by counsel in the negotiations.

- [33] With respect to parcels V370 and V375, it is submitted that Seychelles Rupees Three Hundred Thousand (SCR300,000.00) was paid to the petitioner but counsel for the respondents conceded that he had no documentary evidence of the same. However, he drew the Court's attention to a letter dated 1<sup>st</sup> June 1993 produced by the petitioner as Exhibit G, from the petitioner to the president, in which he requested a revision of the compensation offered for parcels V370 and V375 to include the cost of the access road which was stated to have been built by the petitioner. Reference was made in that context to the petitioner's letter of 12<sup>th</sup> October 1992, the subsequent reply dated 5<sup>th</sup> November 1992, and his second letter of 22<sup>nd</sup> February 1993. This, he said, shows that the petitioner was not resisting or protesting against the compensation offered for the two aforementioned parcels.

*Reply of the Petitioner*

- [34] In reply, counsel for the petitioner submitted that, in their reply to the petition in CP01/2019, the respondents had admitted the averments in paragraph 5 thereof, which are *inter alia* that there was an agreement for the sale of parcel V1970 in 1981 for the sum of Seychelles Rupees Four Million Three Hundred and Twenty Thousand (SCR4,320,000.00). He submitted that this was the value of the property in 1981 and that this could not have depreciated but on the contrary must have appreciated by 1995 when the offer for compensation was made and that therefore the sum of Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) in 1995 for parcel V1970 was not justified, in light of the agreement for its sale in the sum of Seychelles Rupees Four Million Three Hundred and Twenty Thousand (SCR4,320,000.00) in 1981.

## **The Law**

[35] CP08/2018 and CP01/2019 are made pursuant to Part III of Schedule 7 to the Constitution, the provisions of which are reproduced below:

### *PART III 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 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 sub subparagraphs (a) or sub 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 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.*

## **Analysis**

[36] It is not disputed that the properties subject matter of the petitions before this Court were compulsorily acquired by the first respondent whilst they were in the ownership of the

petitioner as shown by the title deeds and transcriptions of the Notices of Acquisition relating to the various parcels in question. Parcel J320 was compulsorily acquired on 4<sup>th</sup> July 1981, parcels V370 and V375 on 7<sup>th</sup> May 1985 and parcel V1970 on 7<sup>th</sup> August 1981.

[37] The evidence on record, in particular the letter dated 1<sup>st</sup> June 1993 from the petitioner to the then President, also shows that even before the Constitution came into force on 21<sup>st</sup> June 1993 and the provisions of Part III of Schedule 7 thereto came into operation, the petitioner had sought compensation under the Lands Acquisition Act, 1977 for his property, which had been compulsorily acquired. It is evident from that letter that he did not consider that he had been fairly and adequately compensated and was seeking the same. In that regard I find it pertinent to reproduce the relevant parts of the letter below:

*“Dear Mr President*

*I am writing to you to seek your assistance to get a fair and adequate compensation for Land and premises compulsory acquired from me between 1981 and 1984.*

**1) LAUREL VILLA – MONT FLEURI**

*I am enclosing herewith all the relevant documents regarding that property which is self explanatory.*

*If you allow me I will recapitulate in a few words the history behind that acquisition: - on the 10<sup>th</sup> July 1981, I contracted to lease the whole premises to the People Bureau of the Libyan Government at a rent of 28,000/- per month for a period of 2½ years (Vide photocopy (1) and (2). This agreement was freely entered into between myself and the Libyan Peoples Bureau. As you will see in clause 1 of (2) it was further agreed that the Libyan Peoples Bureau could exercise their right to purchase that property.*

*On the 7<sup>th</sup> of August a few days before the Libyans were to move in, I was served with a Notice of acquisition (documents (3) giving the reason for the acquisition as “to facilitate the acquisition of mission premises”. A property which I had willingly agreed to sell to them 2 months earlier. I sent in my claim for compensation under the lands acquisition act but this was turned down and by letter LAU/A/207 of the 6<sup>th</sup>, I was awarded only SCR860, 000 /- for the building and was informed in para 5 of the letter, that “no compensation for the land itself can be given”, and in mitigation I was given an ex – gratia award of S250, 000/- by yourself.*

**2) BEAU VALLON – PARCEL NO V370 AND V375**

*I request a revision of the compensation offered to include the cost of the access road which was built by me.*

*You may refer to my letter dated the 12<sup>th</sup> October 1992, the subsequent reply dated 5<sup>th</sup> November 1992 and my second letter of 22<sup>nd</sup> February 1993.*

**3) PORT GLAUD – PARCEL J320**

*The plot of 3 acres was acquired in 1984 and I am glad to see that it is now housing the President's Village, which I consider a worthwhile project. As you will see from my file I was offered only SCR12, 500/- as an ex-gratia award for the 3 acres, as the land was considered of no value. As you may know, I do not own a parcel of land in Seychelles, I should therefore be grateful if you would consider giving me another piece of land of similar value so that I can build a home for myself and my family. If that is not possible I will have to accept adequate monetary compensation in lieu."*

[38] The various communications during the twelve months period from the date of coming into force of the Constitution on 21<sup>st</sup> June 1993 reveal ongoing negotiations between the petitioner and the Government regarding compensation for the compulsory acquisition of his land or their return to the petitioner. These are in particular as follows:

- (i) Letter dated 20<sup>th</sup> September 1993 addressed to Mr. Paul Chow from Minister Dolor Ernesta, then Minister of Community Development (Lands);
- (ii) Letter dated 28<sup>th</sup> October 1993 addressed to the petitioner from Mrs. S. Shroff Principal Secretary (Lands);
- (iii) Letter dated 24<sup>th</sup> February 1994 to Mr. Gerald Pragassen, Director Land and Infrastructure Division;
- (iv) Letter dated 22<sup>nd</sup> September 1994 addressed to Mt. James R. Mancham, Leader of the Opposition from the Petitioner;
- (v) Letter dated 21<sup>st</sup> July 1995 addressed to Mr. France Bonte from Miss L. Barbe, Office of the Minister, Ministry of Community Development;
- (vi) Letter dated 25<sup>th</sup> July 1995 addressed to Mr. France Gonsalves Bonte from Miss S. Mellie, Assistant Director (Lands) for Principal Secretary to which is attached Minutes;

(vii) Letter dated 25<sup>th</sup> July 1995 addressed to the Principal Secretary from Miss S. Mellie, Assistant Director (Lands) for Principal Secretary.

[39] It is evident from these communications that there had been an application for redress in terms of Part III of Schedule 7 of the Constitution, although, it is not possible to ascertain the exact date such application was made. What is certain is that such application had been made by 16<sup>th</sup> September 1993 as shown in the letter dated 20<sup>th</sup> September 1993 to Mr. Paul Chow (referred to at paragraph 38(i) above), in which Minister Dolor Ernesta states the following:

*"I refer to your letter of 16<sup>th</sup> September 1993 addressed to the Minister of Community Development.*

*I have discussed these cases with the Principal Secretary and the Director of lands The Ministry is considering these cases and the Director Lands will revert to Mr. Jumeau in 14 days' time."*

[40] The compulsory acquisition of the plots of land in question having taken place between the period of June 1977 to 21<sup>st</sup> June 1993 under the Lands Acquisition Act, 1977, and the petitioner having applied for redress within the period of twelve months from the date of coming into force of the Constitution on 21<sup>st</sup> June 1993, this matter falls within the purview of Part III of Schedule 7 to the Constitution. As such, the Government had an obligation in terms of its undertaking under paragraph 14 of Part III of Schedule 7 to the Constitution to "*continue to consider*" the applications of the petitioner for compensation for the compulsory acquisition of his land and to "*negotiate in good faith*" with the petitioner with a view to transferring the land back to him where on the date of the receipt of the application the land had not been developed or there was no Government plan to develop it, or where there was a Government plan to develop the land, which the petitioner could implement; or where the aforementioned conditions set out for transferring back the land to the petitioner were not met, compensating him in full by either transferring to him another parcel of land of corresponding value to the land acquired, or paying him full monetary compensation for such land, or a combination of the two amounting to the value of such land.

[41] The petitioner is claiming that the first respondent breached its constitutional obligations under Part III of Schedule 7 to the Constitution in that it did not carry out its negotiations with the petitioner in good faith and that his properties, which were compulsorily acquired, were neither returned to him nor was he paid fair and adequate compensation therefor. It therefore falls to this Court to determine whether this is the case.

[42] For the sake of clarity, I will deal with the acquired properties separately as follows:

*Parcel J320 (CP08/2018)*

[43] Parcel J320 was compulsorily acquired on 4<sup>th</sup> July 1981, according to the transcription of the Notice of Acquisition, “*for a public purpose namely housing*”. According to the cadastral plan, it is of an extent of 12,102 square metres (2.953 acres). In paragraph 6 of the petition it is averred, which is admitted by the respondents, that at the time of its acquisition there was no infrastructure or building on the said parcel. It has been submitted that Parcel J320 constitutes prime land as it is a beachfront property, which is confirmed by the transcription of the notice of acquisition that describes it as “*bounded ... on the west by High Water Mark*”. It was transferred by the first respondent to the National Council for Children by transfer deed dated 21<sup>st</sup> May 1986. It is averred in paragraph 7 of the petition, which is admitted by the respondents, that “*the same was transformed to the existing President Village*”.

[44] The petitioner seeks, in view that the return of parcel J320 is impossible because it has been transferred to the National Council for Children and now houses the President’s Village, compensation by the transfer to him of a corresponding parcel of land in a similar location or area. Alternatively, he seeks full monetary compensation at the market value of the parcel on the date of the judgment or valuation, such valuation to be made by at least three (3) independent appraisers of repute.

[45] The respondents claim that that they have acted in good faith in dealing with the petitioner’s claims for compensation, which have been fully settled after negotiation and agreement under the provisions of Part III of Schedule 7 to the Constitution and that the petitioner has been fairly and adequately compensated. They aver in paragraph 10 of their reply that, “*alternate land was offered to [the petitioner] and land was transferred to him*

*in 1995 in lieu of Parcel J320 together with Parcel V1970”, and at paragraph 11 thereof that, “the land parcel J320 together with V1970 was compensated with alternate land V5093 by a transfer deed dated 5<sup>th</sup> October 1995 including a monetary compensation in a sum of SCR1,400,000 (Seychelles Rupees One Million and Four Hundred) for V1970 together with J320”.*

[46] What arises for the Court’s determination is whether the Government fulfilled its obligation under paragraph 14 (1) of Part III of Schedule 7 to “*continue to consider*” the applications of the petitioner and to “*negotiate in good faith*” with him with a view to returning his compulsorily acquired land to him or compensating him therefor, in the manner set out in that provision.

[47] Parcel J320 was transferred to the National Council for Children in 1986 and it is clear that at the time that the Constitution came into operation on 21<sup>st</sup> June 1993 and the petitioner made his application for compensation under Part III of Schedule 7 of the Constitution, the land had not only been transferred but had already been developed in that the President’s Village had been built thereon. This can be seen from the petitioner’s letter to the then President dated 1<sup>st</sup> June 1993, in which he says with reference to parcel J320, that “*[t]he plot of 3 acres was acquired in 1984 and I am glad to see that it is now housing the President’s Village, which I consider a worthwhile project*”. The Government could not therefore have transferred the land back to the petitioner pursuant to paragraph 14(1)(a) and (b) of Part III of Schedule 7 to the Constitution.

[48] The remaining options open to the Government under paragraph 14(1)(c) of Part III of Schedule 7 was to make full compensation to the petitioner for the land acquired by transferring to him another parcel of land of corresponding value to such land; or paying him full monetary compensation for such land; or a combination of these two options up to the value of such land.

[49] The respondents claim that the petitioner has been compensated for the acquisition of parcel J320 (together with V1970) by the transfer of parcel V5093 and the payment of Seychelles Rupees One Million and Four Hundred thousand (SCR1,400,000.00). Clearly, the Government had opted for the compensation envisaged under paragraph 14(1)(c)(iii)

of Part III of Schedule 7, that is “a scheme of compensation combining items (i) and (ii) up to the value of the land acquired”.

[50] A deed of transfer dated 5<sup>th</sup> October 1995 shows that parcel V5093 was indeed transferred by the first respondent to the petitioner “as part of compensation under the Lands Acquisition Act, 1977 for the compulsory acquisition of parcels V1970 and J320”. In his submissions, counsel for the petitioner concedes that V5093 was transferred to the petitioner as compensation for the compulsory acquisition of parcels V1970 and J320 but denies that any money was paid to him. The evidence also shows that the petitioner subsequently by deed of transfer dated 13<sup>th</sup> and 27<sup>th</sup> November 1997 transferred V5093 to Patrick Guy Mein for a consideration of Seychelles Rupees Five Hundred Thousand (SCR500,000). Counsel for the petitioner submitted that the petitioner was forced to accept V5093 as he might otherwise be left with no compensation at all in view of the situation prevailing in the country at the time where the Government was powerful and he himself had just returned from exile and had nothing to his name. It was also submitted that subsequently he was forced to sell the land as it was partly marshy and not buildable. We therefore find that parcel V5093 was indeed transferred by the first respondent to the petitioner as compensation for the compulsory acquisition of parcel J320.

[51] This Court is however not satisfied that the respondents have made any payment to the petitioner of the sum of Seychelles Rupees One Million and Four Hundred thousand (SCR1,400,000.00). The petitioner denies the payment of any such sum and the respondents have not produced any evidence of the same. In his letter to the President dated 1<sup>st</sup> June 1993, the petitioner states that he was offered only the sum Seychelles Rupees Twelve Thousand Five Hundred (SCR12,500.00) as an ex-gratia award for parcel J320. In his letter dated 22<sup>nd</sup> September 1994 addressed to Mr. James R. Mancham, requesting his intervention and support with the then President Mr. Rene with respect to return of or compensation for his compulsorily acquired property, he stated that that he was offered Seychelles Rupees Twelve Thousand Five Hundred (SCR12,500.00) ex-gratia compensation for parcel J320, which he did not accept. In her letter dated 25<sup>th</sup> July 1995 addressed to Mr. France Gonsalves Bonte, which has as its heading “COMPENSATION FOR COMPULSORY ACQUISITION OF PARCEL V1970 (LAUREL VILLA) AND

PARCEL J320, PORT GLAUD – MR. PHILIPPE JUMEAU”, Miss S. Mellie, Assistant Director (Lands) for Principal Secretary states-

*“I refer to your letter of 11<sup>th</sup> July 1995 in which you accepted our offer of R1.4 m plus the transfer of parcel V5093, Les Mamelles as total compensation for the compulsory acquisition of the above- mentioned parcels.*

*As agreed the above sum will be paid in two equals instalments. The first will be paid within the next two weeks and the second instalment in January 1996. The balance outstanding after payment of the first instalment will bear interest at 8% per annum.”*

[52] To this letter is attached the following minutes of the same date and with the same heading addressed to the Principal Secretary, Finance, presumably from the file of the petitioner with the Ministry responsible for lands with the reference LAU/A/207, LAU/A/141(1) which reads as follows:

*“The President has approved at minute 9 (attached) the payment of R1.4 m plus the transfer of Parcel V5093, Les Mamelles to Mr. Philippe Jumeau as total compensation for the compulsory acquisition of the above-mentioned parcels.*

*The above sum is to be paid in two equal instalments, the first payable immediately and the second instalment in January 1996.*

*Grateful if you issue a cheque for the sum of R700,000 in favour of Mr. France Bonte, Attorney for Mr. Jumeau, so that payment of the first instalment can be effected.*

*I would also appreciate if you would authorise the Registrar General to waive Stamp Duty in respect of the transfer of Parcel V5093 to Mr. Philippe Jumeau.”*

[53] However, we do not subscribe to counsel for the respondents’ argument that the aforementioned writings from the Ministry constitute evidence of such payment and we decline to consider it as such. In the circumstances we are unable to find that the sum of Seychelles Rupees One Million Four Hundred Thousand (SCR1,400,000.00) was paid. In our view the only compensation that was made to the petitioner for the compulsory acquisition of parcel J320 was the transfer of parcel V5093, which he subsequently sold for the sum of Seychelles Rupees Five Hundred Thousand (SCR500,000.00) which is to be noted, was also compensation for the acquisition of parcel V1970 and should be deducted from any compensation to which the petitioner may be found to be entitled to.

- [54] Whether the Government carried out its negotiations with the petitioner in good faith will depend on whether the petitioner was promptly, fairly and fully compensated for the compulsory acquisition of his property. It is to be noted that paragraph 14(1)(c)(i), (ii) and (iii) of Part III of Schedule 7 to the Constitution all provide for full compensation for the land acquired.
- [55] To determine whether the petitioner was fairly and fully compensated this Court must have regard to the actual compensation made to the petitioner in light of the value of the property. This Court has already found that the only compensation made by the Government to the Petitioner in respect of J320 was the transfer of V5093, which the petitioner later sold for the sum of Seychelles Rupees Five Hundred Thousand (SCR500,000).
- [56] As to the value of the properties acquired from the petitioner, including parcel J320, this Court took the view that the valuation of parcels J320, V370, V375 and V1970 (with a building thereon) was required in order for it to be able to come to a proper and informed determination of the matters before it. Therefore, in accordance with its powers under Article 130(4) of the Constitution, the Constitutional Court (Application, Contravention, Enforcement or Interpretation) Rules and established practice in such matters, the Court ordered the valuation of the said parcels by Order dated 25<sup>th</sup> February 2020. A panel of three experts was appointed to carry out the valuation: Mr. Nigel Stanley Valentin and Mr. Patrick Lablache were the experts proposed by the petitioner and the respondents respectively, and the Court selected Mr. Daniel Blackburn as the third expert to complete the panel. Both Mr. Blackburn and Mr. Lablache informed the Court that they were unable to be part of the panel and by Order dated 23<sup>rd</sup> June 2020 were replaced by Mr. Yvon Fostel and Mr. Lester Quatre respectively, both quantity surveyors. The panel was to make available a valuation report to the Court and the parties.
- [57] In terms of the Order, the valuations were to be made on the basis of the value of the parcels at the time the petitioner made his claim before this Court that is, 23<sup>rd</sup> November 2018 for parcels J320, V370 and V375 (CP08/2018); and 25<sup>th</sup> January 2019 for parcel V1970 (CP01/2019).

- [58] To further assist the Court it was ordered that once the valuation had been completed, the first respondent should take cognisance of the report and ascertain whether there were any Government owned properties of corresponding value to parcel J320, parcels V370 and V375, and parcel V1970, and inform the Court of the same.
- [59] A valuation report dated 3<sup>rd</sup> September 2020 and signed by Mr. Lester Quatre and Mr Nigel Stanley Valentin was duly submitted. Mr. Yvon Fostel did not take part in the exercise. According to the report Mr. Lester Quatre and Mr. Nigel Stanley Valentin each performed independent valuation analysis of the properties in question and thereafter mutually agreed on the value of the properties after discussion.
- [60] The total value of the properties is Seychelles Rupees Thirty Two Million Three Hundred and Ten Thousand and Two Hundred (SCR32,310,200.00). The individual market value of the properties as agreed by Mr. Lester Quatre and Mr Nigel Stanley Valentin are as follows:
- (a) Market value of J320 excluding all developmental work as at 23<sup>rd</sup> November 2018 – SCR12,707,100.00;
  - (b) Market value of V1970 including all developmental work as at 25<sup>th</sup> January 2019 – SCR12,544,000.00. It is worth noting that according to the report “*[t]he property is currently accommodating the remains of a previously existing development, old boundary walls, which due to the state of the structures which indicate that they have reached their whole life cycle, their presence have not been considered in this valuation.*”;
  - (c) Market value of V375 excluding all developmental work as at 23<sup>rd</sup> November 2018 – SCR1,323,300.00;
  - (d) Market value of V370 excluding all developmental work as at 23<sup>rd</sup> November 2018 – SCR5,735,800.00.
- [61] It is to be noted that no information has been provided to this Court by the respondents as per its Order of 25<sup>th</sup> February 2020 as to whether there are any Government owned

properties of corresponding value to parcel J320, parcels V370 and V375, and parcel V1970.

[62] Returning to parcel J320, as per the valuation report, the market value of parcel J320 excluding all developmental work as at 23<sup>rd</sup> November 2018, date of filing of the petition, is the sum of Rupees Twelve Million Seven Hundred and Seven Thousand One hundred (Rs12,707,100.00). It is clear that there is a huge disparity between the compensation actually made to the petitioner (Seychelles Rupees Five Hundred Thousand (SCR500,000)) and the value of the land as per the valuation report, even taking into account any appreciation in value of the property in the intervening years, bearing in mind that this sum was also meant to compensate the petitioner for parcel V1970. As such we cannot find that there was full and fair compensation to the petitioner for the compulsory acquisition of parcel J320.

[63] As to the date on which the value of any compulsorily acquired property should be assessed for the purpose of compensation, while the petitioner is of the view it should be the date of judgment, the respondents maintain that compensation, if any, should be equivalent to the value of the property in 1993. This issue also has a bearing on whether compensation was made promptly or not.

[64] Paragraph 14(2) of Part III of Schedule 7 provides that:

*(2) For the purposes of paragraph (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 had been acquired.*

[65] In terms of the Order of 25<sup>th</sup> February 2020, the valuation of the properties were to be made on the basis of the value of the parcels at the time the petitioner made his claims before this Court, in line with the case of ***Moulinie v Government of Seychelles & Anor*** SCA40/2013 [22 April 2016].

[66] In that case, a land owner whose properties had been compulsorily acquired prior to 1993, had made an application to the Government under paragraph 14(1) of Part III of Schedule 7 to the Constitution for redress with respect to the properties of which he had

been divested. Negotiations went on for 14 years without him obtaining satisfaction, and on 5<sup>th</sup> August 2011 he brought an action before the Constitutional Court which ordered the return of some of the properties and ordered monetary compensation for the rest, to be calculated at the market rate as at the coming into force of the Constitution or such other sum as the parties may agree (Vide ***Moulinie v Government of Seychelles (2012) SLR 116***).

[67] The Government and Attorney General appealed against that decision on various grounds. The respondent land owner cross appealed, *inter alia* contesting the award of compensation by the Constitutional Court based on the market value of the land as at the coming into force of the Constitution on 21<sup>st</sup> June 1993. On the cross-appeal, the Court of Appeal did not make a definitive determination as to the date on which the market value of the land was to be assessed for purposes of compensation, but remitted the matter back to the Constitutional Court for the determination of quantum of compensation, stating the following:

(32) *The cross appeal questions the decision of the Constitutional Court on the quantum of the compensation. It should be straight away stated that the issue of compensation in land acquisition matters is not treated the same way as a claim in damages. As the Judicial Committee of the Privy Council stated in the case of **Harel Frères v Ministry of Housing, Lands and Town and Country Planning [supra] 1986 PRV 58**, hardship is inherent in a case of compulsory acquisition...*

(33) *It is for the Government to come up to show that the compensation it has given in full in the sense that it is adequate, prompt and effective to alleviate the hardship imposed on the citizen whose property has been taken away from him to be dedicated for public purposes.*

(34) *One uses the comparative method to determine the market value of the property in lite. The Court, in awarding compensation in the case of the Respondent took the view that there was insufficient evidence in that regard ...*

(35) *The Court found difficulty in accepting the figures on the ground that they had been merely dropped from midair, as it were ...*

(36) *...We would agree with the decision of the court that any claim for compensation which relies on the market value of the acquired properties were*

*best resolved with the assistance of experts in the field, and reliable comparables. In this case, there was no such evidence brought by either party ...*

(Vide ***Government of Seychelles and The Attorney General v Charles Alfred Moulinie SCA16/2012 [7 December 2012]***).

[68] Following remittance of the matter to the Constitutional Court by the Court of Appeal, the Constitutional Court awarded compensation which was calculated on the value of the land in 1993. The Constitutional Court made its award on the basis that as per the applicable law, that is section 14 of Schedule 7 of the Constitution, the Court could only assess and give compensation which was payable as at the date referred to in the Constitution, that is 1993. The landowner who had been divested of his property again appealed against that decision. He contended that the rate applicable should be the current market value of the properties and not the 1993 rate. Allowing the appeal, the Court held that the compensation should be based on the “*fair market value of the property at the time of the claim*”, that is August 2011(Vide ***Moulinie v Government of Seychelles & Anor SCA 40/2013 [22 April 2016]***).

[69] Except for the case of parcel V375, the facts of the *Moulinie* case differs in some respects from the other plots subject matter of the two petitions before this Court. In the *Moulinie* case the Court found that the acquired properties should have been returned by Government to its owner because they were not developed at the time of the coming into operation of the Constitution and there was no Government plan to develop them at the time of the application by the appellant; but instead of returning the land, Government sold them to third parties. Hence the Court stated -

*(8) On those facts, it cannot be said that the 1993 compensation regime applies. As per paragraph 14(1)(c)(ii), the Constitution imposes the duty on government “to pay the person full monetary compensation for the land acquired”.*

[70] This is similar to the situation that pertains in regards to parcel V375, which remained undeveloped after its acquisition in 1985 and was transferred by the 1<sup>st</sup> respondent to the Seychelles Housing Development Corporation (“SHDC”) in 1996. It appears that a house was only built on the property prior to its transfer by the SHDC to Alex and Barbara Port-

Louis as evidenced by the transfer deed dated 17<sup>th</sup> November 1995 and registered on 23<sup>rd</sup> August 1996 which makes mention of “*the land and house comprised in*” V375. It would appear therefore that between the time of compulsory acquisition and 1995 or thereabouts, not only was the land undeveloped but the Government did not have any plans for developing it. It should therefore have been transferred back to the petitioner. In line with the court’s decision in the *Moulinie* case, we therefore find that any compensation to which this Court may find the petitioner entitled to in respect of parcel V375 should be calculated according to the value of the parcel at the time that the petitioner made his claim before this Court.

[71] However, unlike parcel V375 and the land in the *Moulinie* case, the remaining three plots of land in the present case had either been developed or transferred to a third party by the Government prior to the coming into operation of the Constitution on 21<sup>st</sup> June 1993 and hence at the time of the petitioner’s application for compensation under Part III of Schedule 7 of the Constitution. Does this mean that compensation for those three plots of land should be calculated on the value of the land in 1993 in accordance with paragraph 14(2) of Part III of Schedule 7? We do not believe so.

[72] In the *Moulinie* case, the Court, having found on the facts of that case, that the 1993 compensation regime did not apply, went on to say:

*(9) True it is that paragraph 14(1) creates a special cause of action. But when it comes to the payment of compensation, far from derogating from the fundamental principle that full compensation should be paid, it reaffirms that principle so solidly enshrined in Article 20 of the Constitution ....*

*(10) ... Indeed, there is more to paragraph 14(1) of Schedule 7 of Part 3 of the Constitution than meets the eye. Could the framers of the Constitution have created a regime in the Schedule to the Constitution which was in derogation of the Constitutional provisions regarding the fundamental rights and freedoms of the individual? Our answer must be in the negative. The 1993 compensation regime could only be a reaffirmation and an extension of those rights to pre-1993 events, in keeping with the right to property enshrined in Article 20 of the Constitution. Part III was a redeeming “tour de force” meant for the retroactive correction of past injustices along the newly introduced democratic principles. This is amply reflected in the choice of the title “Compensation for Past Land Acquisitions,” the content of the provisions and the specified implementation provisions. Designed to redress old wrongs, it cannot be used today to perpetuate*

those wrongs nor to create new wrongs. Why was the date 1993 introduced? Only to ensure that the compensation due was to be awarded on the basis of the current rate compensation. It was meant to dispel any doubt on whether the compensation for an application for past acquisitions should be made on the basis of the time of the acquisitions or the time of the application which was twelve months from the coming into force of the Constitution i.e. 1993. It basically pre-empted and settled any dispute that, no matter what were the dates of the acquisitions under the Lands Acquisition Act 1977, the rate applicable should be as at 1993, thus consecrating the universal principle of current rate compensation. Emphasis added

[73] With specific reference to the facts of the *Moulinie* case, the Court stated the following:

(11) *The Constitutional Court slipped into error when it decided, without alluding to the relevant facts and without giving any reasoned motivation, that “sub-paragraph (2) of paragraph 14 covers all eventualities arising under sub-paragraph 14(1). Had it addressed its mind to the only specified eventualities sub-paragraph 14(1) covered, it would have come to the conclusion that the case of the appellant did not fall within any of the situations envisaged by that sub-paragraph.*

(12) *The properties in lite were not returned to the previous owner. There were no developments on the properties on the date of the receipt of the application. There were no plans to develop them. Yet Government still held to the lands before they were transferred to third parties. Paragraph 14(1) (a) and (b) has no application. Accordingly, full compensation is payable under sub-paragraph 14 (1) sub-paragraph (c) (ii). This provision binds government, “where the land cannot be transferred back under sub-sub-paragraphs (a) or sub-sub-paragraphs (b), ... paying the person full monetary compensation for the land acquired.”*

[74] Referring to paragraph 14(1)(c)(ii) of Schedule 7, the Court went on further to state:

(13) *It is to be noted that this part of the provision refers to full compensation and not compensation as at 1993. Accordingly, full compensation which means the current rate should be paid. To decide otherwise would be to go against the substantive article 20 of the Constitution and the appellant will have a clear cause of action under that Article ...*

[...]

(16) *The drafters of the Constitution cannot have been amnesic of Article 20 when it came to Part III of Schedule 7 regarding the application of past acquisitions. In fact, they showed due regard to it when they not only created an action but also provided that the compensation for those pre-1993 injustices should be as per the market value as at 1993. A special regime meant to correct*

*past injustice cannot be used to become a Charter for future injustices which a Constitutional Court interpretation of paragraph 14 would cause.*

[75] We further find the following observations of the Court of Appeal in SCA16/2012 (supra) relevant to the issue of whether compensation should be based on market value of the land at the time of coming into operation of the Constitution or the time of filing of the petition:

(26) *We have stated that in case the land cannot be returned, government should pay compensation. Compensation shall be for the market value of the land at the time of coming into force of the Constitution or such other value as may be agreed between the Government and the divested owner.*

(27) *However it should be noted that the date of entry into the Constitution was set down as the cut-off date because it was thought that all claims would be settled within a reasonable time. 30 years have elapsed since. It follows that the idea of market value should not be defeated by an interpretation which smacks of bad faith in causing a delay. Government should not be seen to be benefitting from the (sic) circumventing the clear provision of the Constitution by causing a delay in compensation which is clearly inordinate. It is a fundamental principle that all compensations arising out of compulsory acquisitions of land should be prompt, effective and adequate.*

(28) *... While we concede that these matters could not have been determined overnight, the fact remains that delay beyond a certain point amounts to denial. The delay has in this case had (sic) ended up in denials of constitutional justice.*

(29) *If two or three years delay may be granted to the Government to have disposed of the applications, any delay beyond has become a denial of constitutional justice for which constitutional redress should be granted unless Government comes up with an acceptable recital of facts in this regards ...*

[...]

(39) *We have been seriously concerned with the delay which has occurred in giving effect to the rights of the divested owner. The compensation should have been paid as early as reasonably possible, as rightly submitted by Mr. Boulle who invoked Schedule 2 of the Constitution which requires that where no time is prescribed or allowed within which an act shall or may be done, as the case may be, it shall be done with all the convenient speed and as often as the occasion requires. As long as 19½ years have elapsed since Government undertook constitutionally to address the issues of past injustices.*

[76] On the basis of the above and taking into consideration, firstly, that Parcel J320 and V1970 were compulsorily acquired in 1981, and V370 and V375 in 1985; secondly, that negotiations for their compensation commenced prior to 1993 and continued thereafter; thirdly, that CP 08/2018 was filed for compensation for the compulsory acquisition of parcels J320, V370 and V375 on 23<sup>rd</sup> November 2018 and that CP01/2019 was filed for redress for the compulsory acquisition of V1970 on 25<sup>th</sup> January 2019, some 25 years after the coming into operation of the provisions of Part III of Schedule 7 of the Constitution, this Court cannot but find that there was an inordinate delay in compensating the petitioner in breach of the fundamental principle that all compensations arising out of compulsory acquisitions of land should be prompt, effective and adequate, which resulted in a denial of Constitutional justice for the petitioner. The petitioner has been deprived of his properties from 1981 and 1985 respectively and when he came back from exile did not even have a place of his own to stay, but had to rely on the generosity of others for accommodation. As stated in SCA40/2013 (*supra*), Part III of Schedule 7 to the Constitution was “*meant for the retroactive correction of past injustices*” and “*[designed to redress old wrongs, it cannot be used today to perpetuate those wrongs nor to create new wrongs]*”. We find that it would be unacceptable therefore to use paragraph 14(2) of Part III of Schedule 7 to perpetuate these past injustices by awarding compensation based on the value of the compulsorily acquired properties in 1993. For these reasons we find that any compensation due to the petitioner for the acquisition of J320, V370, V375 and V1970 should be calculated on the basis of the value of the parcel at the time that the petitioner made his claims before this Court.

[77] Having found that compensation in respect of parcel J320 was not made promptly, fairly or fully by the Government to the petitioner, we cannot find that the Government negotiated in good faith.

[78] Parcel J320 having been developed cannot be returned to the petitioner. As stated no information has been provided to this Court by the respondents of a Government owned property of a value corresponding to the value of parcel J320, which could be transferred to the petitioner as compensation for the acquisition of parcel J320. In the circumstances, it is our view that full monetary compensation, which is the alternative remedy sought by

the petitioner, should be awarded to him. Such compensation amounts to Seychelles Rupees Twelve Million Seven Hundred and Seven Thousand One Hundred (SCR12,707,100.00) from which the sum of Seychelles Rupees Five Hundred Thousand (SCR500,000), which the petitioner obtained for the sale of parcel V1593, should be deducted bearing in mind that the latter sum was also compensation for parcel V1970.

*Parcels V370 and V375 (CP08/2018)*

[79] These two parcels were compulsorily acquired on 7<sup>th</sup> May 1985. The declaration of the compulsory acquisition was registered on 30<sup>th</sup> September 1985 and transcribed in Vol 70 No. 1219 and Repertory Vol 32 at page 72. According to their cadastral plans, V370 measures 7,539.1 square metres (1.8630 acres) and V375 is of an extent of 1,202.7 square metres (0.2972 acres). In paragraph 6 of the petition (CP08/2018) it is averred, which is admitted by the respondents, that at the time of its acquisition, there was no infrastructure or building on the said parcel. It has been submitted that the said parcels are prime land as they are located at Beau Vallon.

[80] It is averred in paragraph 9 of the petition, which is admitted by the respondents, that parcel V370 was subdivided into several smaller plots, which were used by the first respondent in its Land and Housing programme. The date of such subdivision and transfer is not known to the Court.

[81] Parcel V375 was transferred by the first respondent to the SHDC by transfer deed dated 2<sup>nd</sup> August 1996 for the consideration of Seychelles Rupees Fifty Four Thousand (SCR54,000). The deed was registered on 8<sup>th</sup> August 1996. By transfer deed dated 17<sup>th</sup> November 1995 and registered on 23<sup>rd</sup> August 1996 the SHDC transferred “*the land and house*” comprised in Title No. V375 to Alex Port-Louis and Barbara Port-Louis for a consideration of Seychelles Rupees Fifty Four Thousand (SCR54,000). Prior to the transfer of the land by the SHDC to the Port-Louis the parcel was developed in that a house was built thereon. In light of the dates of the aforementioned transfers, this seems to have occurred between the years 1995 and 1996. The Port-Louis in turn transferred Parcel V375 to Madeleine Serena Manji née Dunford by transfer deed dated 12<sup>th</sup> July 2006.

- [82] The petitioner is of the view that the return of parcels V370 and V375 is not possible and seeks compensation by the transfer to him of corresponding parcels of land in a similar location or area. Alternatively, he seeks full monetary compensation at the market value of those parcels on the date of the judgment or valuation, such valuation to be carried out by at least three (3) independent appraisers of repute.
- [83] As with parcel J320 the respondents claim that that they have acted in good faith in dealing with the petitioner's claims for compensation which have been fully settled after negotiation and agreement under the provisions of Part III of Schedule 7 to the Constitution and that the petitioner has been fairly and adequately compensated. Further they aver in paragraph 11 of their reply (CP08/2018) that, “[t]he other claims regarding V370 and V375 had also been settled by way of monetary compensation in a sum of SCR300,000 (Seychelles Rupees Three Hundred Thousand in December 1993”.
- [84] Under paragraph 14(1) of Part III, Schedule 7, the Government have an obligation to “*continue to consider*” the applications of the petitioner for compensation for the compulsory acquisition of his land and to “*negotiate in good faith*” with the petitioner with a view to either returning the land to him or, where this is not possible, compensating him in the manner set out in that provision.
- [85] This Court has no information as to when parcel V370 was subdivided and transferred to third parties pursuant to the Government's Land and Housing programme. It is therefore not known to the Court if this was done prior to the petitioner's application under Part III, Schedule 7 with the coming into force of the Constitution in 1993 or not. The Court is therefore unable to make a determination as to the appropriate action under paragraph 14(1) under Part III, Schedule 7 which should have been taken by the Government that is, the return of parcel V370 to the petitioner or compensating him.
- [86] On the other hand, parcel V375, remained in the ownership of the Government after its acquisition in 1985 until it was transferred to the SHDC in 1996. Development of that parcel appears to have occurred sometime in 1995 or 1996, and in any event after the petitioner's application under Part III, Schedule 7. The property should therefore have been transferred back to the petitioner in accordance with paragraph 14(1)(a) of Part III

of Schedule 7. That it was not is a clear indication of the Government's bad faith in negotiating with the petitioner.

[87] In any event, the respondents claim that the petitioner has been compensated for the compulsory acquisition of parcels V370 and V375 by payment of Seychelles Rupees Three Hundred Thousand (SCR300,000) in December 1993, opting for compensating the petitioner under 14(1)(c)(ii) of Part III of Schedule 7, that is "*paying the person full monetary compensation for the land acquired*". I note that the respondents have not brought any evidence of such payment which was denied by counsel for the petitioner.

[88] It appears that an offer for compensation was made to the petitioner in respect of parcels V370 and V375. In that regard I take note of the contents of the petitioner's letter to the then president dated 1<sup>st</sup> June 1993 in which he requested a revision of the compensation offered for parcel No V370 and V375 to include the cost of the access road which he stated had been built by himself.

[89] Further and more importantly in his letter of the 22<sup>nd</sup> September 1994 to Mr. James Mancham the petitioner acknowledges that he had agreed to a compensation package in respect of the Beau Vallon properties which had already been paid. The relevant part of the letter reads:

"COMPENSATION FOR ACQUISITION OF PROPERTY UNDER SECOND REPUBLIC

*I am writing to seek your intervention and support in the matter of my claim for compensation and/or return for property which was acquired during the Second Republic. Essentially three parcels of land were taken: At Beau Vallon, at Port Glaud, at Mont Fleuri.*

*Beau Vallon: I have agreed to a compensation package and payment has already been made.*" Emphasis is mine

[90] We are convinced on the strength of the petitioner's own admission in his letter dated 22<sup>nd</sup> September 1994 to Mr. Mancham that he was paid some compensation for the acquisition of parcels V370 and V375. However, the difficulty is in ascertaining the amount of such compensation. There is only the averment at paragraph 12 of the affidavit

of Mr. Ravi Valmont in support of the respondents' reply to the petitioner's petition in CP 08/2018, which is unsupported by any documentary evidence whatsoever to the effect that, "*the ... claims regarding Parcels V370 and V375 had ... been settled by way of monetary compensation of SCR300,000 (Seychelles Rupees Three Hundred Thousand) in December 1995*". The Court cannot accept this as evidence of payment of the said sum and in the absence of any concrete evidence of such payment cannot make a finding that such sum was paid.

[91] This Court is further of the view that while the petitioner may have agreed to the compensation package offered by Government, this does not preclude him from seeking redress under Part III of Schedule 7 given the prevailing political climate in the country at the time, which led him to accept whatever he was offered regardless of whether it reflected the true value of the acquired property at the time.

[92] As stated in respect of parcel J320, the good faith of Government in negotiating with the petitioner will also depend on whether the petitioner was promptly, fairly and fully compensated for the compulsory acquisition of his property having regard to the actual compensation made to the petitioner in light of the value of the property and the time that has elapsed since the petitioner's application under Part III, Schedule 7.

[93] Parcels V370 and V375 were valued at Seychelles Rupees Five Million Seven Hundred and Thirty Five Thousand Eight Hundred (SCR5,735,800.00) and Seychelles Rupees One Million Three Hundred and Thirty Three Thousand Three Hundred (SCR1,323,300.00) respectively as per the valuation report, which amounts to a total of Seychelles Rupees Seven Million Fifty Nine Thousand One Hundred (SCR7,059,100.00). It is clear therefore that that even if the sum of Seychelles Rupees Three Hundred Thousand (SCR300,000.00) had been paid to the petitioner, which has not been accepted by this Court because not proved, such a sum cannot be considered as fair and full compensation for the two parcels. As stated previously, the petitioner has commenced the present actions some 25 years after the coming into operation of the provisions of Part III of Schedule 7 and his application for redress thereunder. It cannot therefore be said that

there was prompt compensation to the petitioner. This Court therefore finds that the Government did not negotiate in good faith as required by Part III, Schedule 7.

[94] With regards to parcel V375 the fact that a house was built thereon and transferred to the SHDC in 1996 after the petitioner's application under Part III of Schedule 7, instead of being returned to him is also a clear indication of the Government's bad faith in negotiating with the petitioner.

[95] As it stands now, parcel V375 cannot be transferred back to the petitioner because it is in the ownership of a third party and appears to have been developed. The same applies to V370, which has been subdivided, transferred to third parties and developed.

[96] No information was provided to this Court by counsel for the respondents of a Government owned property of a value corresponding to the value of parcels V370 and V375 which could be transferred to the petitioner as compensation for the compulsory acquisition of those parcels. Full monetary compensation should therefore be paid to the petitioner. Such compensation should be in the sum of Seychelles Rupees Seven Million Fifty Nine Thousand One Hundred (SCR7,059,100.00) i.e. (SCR5,735,800.00 + SCR1,323,300.00).

*Parcel V1970 (CP01/2019)*

[97] Parcel V1970, according to its cadastral plan, measures 3,584 square metres (0.886 acres). In paragraph 7 of the petition it is averred, which is admitted by the respondents, that at the time of its acquisition there was a building standing on parcel V1970 known as "Laurel Villa" that was used as a dwelling house. It has been submitted that Parcel V1970 is located in a prime area at Mont Fleuri.

[98] The circumstances surrounding the acquisition of parcel V1970 and Laurel Villa are as follows: On 10<sup>th</sup> July 1981, the petitioner entered into an agreement with the People's Bureau of the Socialist People's Libyan Arab Jamahiriya for the lease of parcel V1970 and the buildings thereon at a monthly rent of Seychelles Rupees Twenty Eight Thousand for a period of five years, effective 1<sup>st</sup> September 1981. It was a term of the agreement that *"the Lessee will be entitled to purchase the premises subject to Government*

*approval and the law which governs the conditions of sale to foreigners at an agreeable sum of FOUR MILLION THREE HUNDRED AND TWENTY THOUSAND RUPEES including tax” and that “[t]he price is subject to negotiations between both parties during the first term of two years lease”.*

[99] Parcel V1970 was compulsorily acquired on 7<sup>th</sup> August 1981, according to the transcription of the Notice of Acquisition, “*for a public purpose namely to facilitate the acquisition of mission premises*”. It is averred in paragraph 9 of the petition (CP01/2019), which is admitted by the respondents, that “*[ownership of parcel V1970 was transferred to and remained in the name of the 1<sup>st</sup> Respondent from the date of acquisition until 1983 when the 1<sup>st</sup> Respondent transferred the Property to the People’s Bureau of Socialist People’s Libyan Arab Jamahiriya*”. It is further averred that the “*[deed of transfer between the 1<sup>st</sup> Respondent and the People’s Bureau of Socialist People’s Libyan Arab Jamahiriya could not be traced at the Land Registry*”. A certificate of official search dated 17<sup>th</sup> July 2017 confirms that the proprietor of the parcel is the People’s Bureau of the Socialist People’s Libyan Arab Jamahiriya, although, the date when such property was transferred to its current owner cannot be ascertained from that document. In any event, the respondents have admitted in their affidavit in reply the petitioner’s averment that the first respondent transferred the property to its current owner in 1983. Further, the petitioner in his letter dated 24<sup>th</sup> February to Mr. Gerald Pragassen in which he had proposed different formulas for calculating compensation for parcel V1970 for the Government to consider, stated the date on which the property was sold by the Government to the Libyan Embassy as 26.10.1983. We shall therefore proceed on the basis that the transfer of parcel V1970 was effected in 1983.

[100] The petitioner at paragraph 19 of his affidavit in support of the petition avers that from the date of the compulsory acquisition neither the Government nor the People’s Bureau of the Socialist People’s Libyan Arab Jamahiriya have developed parcel V1970 “*whereby the Villa fell into dilapidation and transformed into an abandoned property*”. The petitioner further avers at paragraph 20 of his affidavit that parcel V1970 was not used for the purpose for which it was acquired and there were no plans to develop it.

[101] It is further averred at paragraph 14 of the petition that, “*in negotiations with the 1<sup>st</sup> Respondent for the return of parcel V1970, the 1<sup>st</sup> Respondent has instead offered the Petitioner monetary compensation in a sum that does not reflect the market value of Parcel V1970 as at 21<sup>st</sup> June, 1993, or the current market value of Parcel 1970*” and that, “[*t*]the Petitioner has categorically refused all monetary offers made to it by the 1<sup>st</sup> Respondent and maintained to the 1<sup>st</sup> Respondent that in the circumstances the 1<sup>st</sup> Respondent should, and the Petitioner wants, the 1<sup>st</sup> Respondent and/or the People’s Bureau of the Socialist People’s Libyan Arab Jamahiriya to return or retransfer Parcel V1970 to the Petitioner”. In support of these averments, the petitioner relies on the letters referred to in paragraph 38(ii), (iii), (iv) and (v) above. In our view these letters do not reflect a categorical refusal for monetary compensation, but on the other hand shows that the petitioner was open to the idea of such compensation but was dissatisfied with the quantum being offered.

[102] The remedies prayed for by the petitioner may be summarised as follows:

- (i) that the transfer of parcel V1970 by the first Respondent to the People’s Bureau of the Socialist People’s Libyan Arab Jamahiriya be “*cancelled, rescinded, annulled or revoked*” and that the 1<sup>st</sup> Respondent returns the said parcel to the petitioner;
- (ii) if the return of parcel V1970 is impossible, that a corresponding parcel of land with a substantially similar building thereon and at a similar location be transferred to him by way of compensation;
- (iii) Alternatively, the petitioner seeks full monetary compensation at the market value of the parcel on the date of the judgment, the valuation of such parcel to be made by at least three (3) independent appraisers of repute.

[103] Similarly to the case of parcels J320, V370 and V375, the respondents claim that that they have acted in good faith in dealing with the petitioner’s claims for compensation, which have been fully settled after negotiation and agreement under the provisions of Part III of Schedule 7 to the Constitution and that the petitioner has been fairly and

adequately compensated. They aver in paragraph 11 of their reply (CP01/2019) that, “*alternate land was offered to [the petitioner] and land was transferred to him in 1995 in lieu of Parcel V1970*”, and at paragraph 13 thereof that, “*the land parcel V1970 together with land parcel J320 was compensated with alternate land V5093 by a transfer deed dated 5<sup>th</sup> October 1995*”. It is further averred that “*the petitioner was also, in addition to alternate land, paid monetary compensation in a sum of SCR1,400,000 (Seychelles Rupees One Million and Four Hundred)for V1970 together with J320*”.

[104] It falls to the Court to determine whether the Government fulfilled its obligation under paragraph 14(1) of Part III of Schedule 7, to “*continue to consider*” the applications of the petitioner and to “*negotiate in good faith*” with him with a view to either returning him the land that was compulsorily acquired from him or compensating him in accordance with that provision.

[105] Parcel V1970 and the house thereon was transferred to the Peoples Bureau of the Socialist People’s Libyan Arab Jamahiriya by the Government in 1983. Therefore, at the time the Constitution came into operation on 21<sup>st</sup> June 1993 and the petitioner made his application for redress under Part III of Schedule 7 of the Constitution, the land had already been transferred. The Government could not therefore have transferred the land back to the petitioner pursuant to paragraph 14(1)(a) and (b) of Part III of Schedule 7 to the Constitution. Under paragraph 14(1)(c) of Part III of Schedule 7 to the Constitution it had the option to compensate the petitioner by transferring to him another parcel of land of corresponding value to the property acquired, paying him full monetary compensation for the property acquired, or a combination of these two options.

[106] The respondents claim that the petitioner has been compensated for the compulsory acquisition of parcel V1970 by the transfer to him of parcel V5093 as well as payment of monetary compensation in the sum of Rupees One Million and Four Hundred Thousand SCR1,400,000.00 (Rs1,400,000.00). I note that both the transfer of parcel V5093 and the alleged payment of monetary compensation constituted compensation for the compulsory acquisition of parcel J320 as well as V1970. This Court stated at paragraph 53 hereof that it was unable to find that the sum of Rupees One Million Four Hundred Thousand was

paid to the petitioner, there being no evidence of the same. This Court also found at paragraph 50 that parcel V5093 was indeed transferred to the petitioner as part payment for the compulsory acquisition of J320 and V1970, which he subsequently transferred to Patrick Guy Mein for a consideration of Rupees Five Hundred Thousand (Rs500,000). The sum of Rupees Five Hundred Thousand (Rs500,000) should therefore be deducted from any compensation that the petitioner may be found to be entitled to with respect to parcel V1970 as well as parcel J320.

[107] In his letter dated 1<sup>st</sup> June 1993 to the then President, in respect of Parcel V 1970 and the house thereon, the petitioner stated that he was awarded Seychelles Rupees Eight Hundred and Sixty Thousand (SCR860,000.00) for the building but was informed that no compensation could be given for the land and in mitigation was instead given an ex-gratia award of Seychelles Rupees Two Hundred and Fifty Thousand (SCR250,000.00). In his letter to Mr. Gerald Pragassen dated 24<sup>th</sup> February 1994, in which he proposes three different formulas for calculating compensation for parcel V1970 and the house thereon for the Government to consider, a sum of Seychelles Rupees One Million One Hundred Thousand (SCR1,100,000.00) is deducted from the amount which is proposed to be paid for the land and the building. This sum is explained as “*Less paid to bank – Taxation*”, “*Less payment by Government –Bank/Tax*” and “*Less payment by Government – Bank/Tax*” in Formulas 1, 2, and 3 respectively. Although there is a slight discrepancy between the sums stated to have been paid in the letter to the President, which amounts to Rupees One Million One Hundred and Ten Thousand (SCR1,110,000.00) and the letter to Mr. Pragassen, namely, Rupees One Million One Hundred Thousand (SCR1,100,000.00), this lends credence that a payment was made to the petitioner by the Government for the purpose stated in his letter to the President, which we will take to be the sum of Rupees One Million One Hundred and Ten Thousand (SCR1,110,000.00). This sum will also have to be deducted from any compensation which the petitioner may be found to be entitled to with respect to parcel V1970.

[108] In order to determine whether the Government negotiated in good faith with the petitioner as required by paragraph 14 of Part III of Schedule 7, this Court has to ascertain whether the petitioner was promptly, fairly and fully compensated for the

compulsory acquisition of his property having regard to the actual compensation made to the petitioner and the value of the property at the time of filing of the petition as well as the time that has elapsed since the petitioner's application under Part III, Schedule 7.

[109] The market value of V1970 including all developmental work as at 25<sup>th</sup> January 2019 has been assessed at Seychelles Rupees Twelve Million Five Hundred and Forty Four Thousand (SCR12,544,000.00) as per the valuation report. It is worth noting that this sum does not include the valuation of the house which used to exist on the property. According to the report "*[t]he property is currently accommodating the remains of a previously existing development, old boundary walls, which due to the state of the structures which indicate that they have reached their whole life cycle, their presence have not been considered in this valuation*".

[110] Taking into account that the Government have paid only the meagre sum of Seychelles Rupees Five Hundred Thousand (SCR500,000.00) for both parcel J230 valued at Seychelles Rupees Twelve Million Seven Hundred and Seven Thousand One Hundred (SCR12,707,100.00) and V1970 valued at Seychelles Rupees Twelve Million Five Hundred and Forty Four Thousand (SCR12,544,000.00), and Rupees One Million One Hundred and Ten Thousand (SCR1,110,000.00) in respect of V1970 and the house thereon, this Court finds that there was no full and fair compensation to the petitioner by the Government for his compulsorily acquired property. This Court therefore finds that the Government did not act in good faith as required by paragraph 14 of Part III Schedule 7 to the Constitution in negotiating with the petitioner to compensate him for the compulsory acquisition of V1970 and the house thereon.

[111] The bad faith of the Government is also made evident by the fact that in 1981 parcel V1970 and the house thereon had been valued at Seychelles Rupees Four Million Three Hundred and Twenty Thousand (SCR4,320,000.00), which the sum of Rupees One Million One Hundred and Ten Thousand (SCR1,110,000.00) and the transfer of parcel V5093 (valued at SCR500,000.00) even if considered as compensation solely for parcel V1970 and the house thereon, falls short of by more than two and a half million Rupees. All the more so when one considers the reason for the compulsory acquisition of the

property which was purportedly to facilitate the acquisition of mission premises, when the petitioner himself had just entered into a lease agreement with the same party to which the Government sold the property, which gave that party an option to purchase the property.

[112] The bad faith of Government is further shown by the fact that some 25 years have elapsed since the coming into operation of the provisions of Part III of Schedule 7 and the petitioner's application for redress thereunder and the filing of the present petitions before this Court. In light of this, it cannot be said that there was prompt compensation to the petitioner.

[113] The petitioner has prayed for the rescission of the transfer of parcel V1970 by the first Respondent to the Peoples Bureau of the Socialist People's Libyan Arab Jamahiriya and for the return of the said parcel to him. If this is not possible, then he seeks compensation either by transfer of another plot of land of similar value or monetary compensation.

[114] Is the return of parcel V1970 possible in the circumstances of this case? In **SCA 16/2012 (supra)** the Court of Appeal made it clear that when an application is made under Part III of Schedule 7 of the Constitution the property must be returned "*where there has not been any development; where there is no Government plan to develop it; and where there is government plan to develop but the development may be undertaken by the divested landowner*". According to the Court, compensation only comes in under the provisions of Part III of Schedule 7 on the occurrence of certain events, namely, "*where there has been development on the land and where there is government plan to develop same which development, on having been offered to the landowner he declines to carry out. In such a case, government may take upon itself to develop it and to pay full compensation*".

[115] There is no evidence that parcel V1970 had undergone further development from the time of its acquisition in 1981 to the time of coming into operation of the Constitution in 1993. The only thing that had happened was that the property had been transferred to the Peoples Bureau of the Socialist People's Libyan Arab Jamahiriya in 1983. In fact it would appear that the parcel remains undeveloped with no plans for development even at this moment in time. Had the property remained in the hands of Government the solution

would have been simple: the return of the parcel to the petitioner pursuant to the obligation of the State under paragraph 14(1)(a) of Part III Schedule 7. However, the property is now in the hands of a third party as shown by the certificate of official search dated 17<sup>th</sup> July 2017.

[116] The obligation to return compulsorily acquired land is on the State and not on a third party to which such land has been transferred by the Government regardless of if the land has or has not been further developed since the time of its compulsory acquisition. To decide otherwise would constitute an infringement of the third party's constitutionally protected Right to Property. It is precisely this kind of situation which led the framers of the Constitution to include paragraph 14(1)(c) of Part III, Schedule 7 which provides for situations "*where the land cannot be transferred back under sub subparagraph (a) or sub subparagraph (b)*". In such situations this provision provides for full compensation for the land acquired in kind or by monetary compensation or a combination of the two up to the value of the land acquired. In our view the *raison d'être* behind this provision is to render justice in situations such as the present one where however desirable it might be and however much the Court would wish to return the land to its previous owner, this is not possible because it is now in the hands of a third party, which is not even a party to these proceedings. In our view therefore the applicable provision in the case of V1970 is paragraph 14(1)(c) of Part 111 of Schedule 7. The Court therefore cannot accede to the petitioner's prayer to rescind the transfer of parcel V1970 from the first respondent to the People's Bureau of the Socialist People's Libyan Arab Jamahiriya and order the transfer of the said parcel back to him.

[117] As with the other parcels, no information has been provided to this Court by counsel for the respondents of a Government owned property of a value corresponding to the value of parcel V1970 which could be transferred to the petitioner as compensation for its compulsory acquisition. Accordingly, we find that full monetary compensation in the sum of Seychelles Rupees Eleven Million Four Hundred and Thirty Four Thousand (SCR11,434,000.00) i.e. (Seychelles Rupees Twelve Million Five Hundred and Forty Four Thousand (SCR12,544,000.00) less Seychelles Rupees One Million One Hundred and Ten Thousand (SCR1,110,000.00)) should therefore be paid to the petitioner. The

final computation of compensation should also take into account the sum of Seychelles Rupees Five Hundred Thousand (SCR500,000.00) being the value of parcel V5093, which was transferred to the petitioner as part compensation for parcels V1970 and J320.

### **Decision**

[118] On the basis of this Court's findings:

- (a) that the Government did not negotiate in good faith with the petitioner with a view to returning or compensating him for the land which it had compulsorily acquired from him, thereby breaching its obligations under Part III of Schedule 7 to the Constitution;
- (b) that full monetary compensation should be paid to the petitioner for the compulsory acquisition of parcels J320, V370, V375 and V1970 in the absence of any indication from the respondents as to any land parcels of corresponding value to the said parcels,

we enter judgment for the petitioner in the total sum of Seychelles Rupees Thirty Million Seven Hundred Thousand Two Hundred (SCR30,700,200.00)being:

- (i) For parcel J320: **Seychelles Rupees Twelve Million Seven Hundred and Seven Thousand One hundred (SCR12,707,100.00);**
- (ii) For parcel V1970: **Seychelles Rupees Eleven Million Four Hundred and Thirty Four Thousand (SCR11,434,000.00)**(Seychelles Rupees Twelve Million Five Hundred and Forty Four Thousand (SCR12,544,000.00) less Seychelles Rupees One Million One Hundred and Ten Thousand (SCR1,110,000.00);
- (iii) **Less the sum of Rupees Five Hundred Thousand (SCR500,000.00)** being the value of parcel V5093 which was transferred to the petitioner as part compensation for parcels V1970 and J320;
- (iv) For parcel V370: **Seychelles Rupees Five Million Seven Hundred and Thirty Five Thousand Eight Hundred (SCR5,735,800.00);**

- (v) For parcel V375: **Seychelles Rupees One Million Three Hundred and Thirty Three Thousand Three Hundred** (SCR1,323,300.00).

[119] We also award costs to the petitioner.

Signed, dated and delivered at Ile du Port on 13<sup>th</sup> April 2021

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Govinden CJ

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Vidot J

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Carolus J