IN THE SUPREME COURT OF SEYCHELLES

MR. PHILIP MOREL DUBOIL **PETITIONER**

VERSUS

1. **THE SEYCHELLES GOVERNMENT**
(Rep by the Attorney General)
2. ATTORNEY GENERAL **RESPONDENTS**

Civil Side No 191 of 2002

Mr. P. Boulle for the Petitioner

Mr. R. Govinden for the Respondents

JUDGMENT

B. Renaud J

The Petitioner originally entered his Petition on 19th July, 2002 and was amended with leave of the Court on 20th May, 2003. It is the amended Petition and the Amended answer thereto that are relevant for the present matter.

In this Petition the Petitioner had prayed this Court for the following:

(i) *A Writ of Certiorari to quash the decision of the Minister to acquire 226 meters of land on Parcel H4795 and;*

(ii) *A declaration that the acquisition of land of the Petitioner is unlawful, and null and void*.

The Respondents on the other hand prayed this Court to dismiss the Petition, with costs.

It is not in dispute that the Petitioner is a Supervisor and runs business of producing honey from bee hives he keeps at Pointe Conan on Parcel H4795 which he owns and where he also resides.

By virtue of a letter dated 6th June, 2002 addressed to the Petitioner from the Ministry of Land Use and Habitat, he was informed that the Government intended to acquire 226 square meters from Parcel H4795 for the purpose of a road access pursuant to Section 4(1) of the Acquisition of Land in the Public Interest Act 1996 (the Act).

The Minister of Land Use and Habitat published a notice of intended acquisition of the land dated 4th June 2002, under Section 4(1) of the Act, in the Official Gazette of 10th June 2002 and the Nation newspapers of 10th, 11th, 12th June, 2002.

On 26th June 2002, the Petitioner filed a Petition in the Constitutional Court to declare that the intended acquisition of the 226 square meters from Parcel H4795 to be unconstitutional and to declare the notice of intended acquisition to be null and void.

By virtue of a letter dated 24th June, 2002 addressed to the Petitioner from the Ministry of Land Use and Habitat, the Petitioner was notified that 226 meters of land from Parcel H4795 was acquired for the purpose of road access pursuant to Section 6(1) of the Act.

The Minister declared by notice dated 25th June, 2002 published in the Gazette of 1st day of July 2002 and published in the Nation newspaper on 26th, 27th, and 28th June 2002 that the land mentioned above is acquired under Section 6(1) of the Act.

The Respondents denied the averment and put the Petitioner to strict proof of its allegation that the Minister failed to serve a copy of intended acquisition published in the Gazette and

Nation newspaper on the Petitioner in compliance with Section 4(1) (c) of the Act.

The Respondents denied the allegation of the Petitioner that the Minister furthermore failed to give a description of the land intended to be acquired as required by Section 4(2)(a) of the Act, as the notices which had been published in the Nation and Gazette only refer to a plan which can be inspected in the office of the Director of Land Management, Second Floor, Independent House, Victoria, Mahe. The Respondents went on to aver that Section 4(1) of the Act has been complied with and the Respondents added that that section requires that a description of the land be stated. The notice published in the Gazette had a schedule attached to it, which gave the measurements of the different portions to be acquired from the three plots to be used for the road. This, according to the Respondents, is ample description, and the notice went further to state that the plan of the area can be inspected at a specific place, giving those interested an opportunity to get further information.

The Respondents denied the Petitioner's allegation that the Minister failed to serve a copy of the notice, dated 25th June, 2002, in compliance with Section 6(1) of the Act and put the Petitioner to strict proof of that allegation.

The Respondents also denied the Petitioner's allegation that the Minister furthermore failed to give a description of the land intended to be acquired as required by Section 6(3) of the Act and put the Petitioner to strict proof of that allegation.

The Respondents further denied the Petitioner's allegation that he went to inspect the plan at the place mentioned and he was informed that there were no plans to be inspected, and put the Petitioner to strict proof of that allegation. The Respondents went on to aver that the plan had been prepared before the notice was published, and was available at the office of the Director of Land Management as stated in the notice, and had the Petitioner come to inspect same he would have been given access to.

The Respondents denied the allegation of the Petitioner that the Minister furthermore failed to serve and publish a notice to treat under Section 5(1) of the Act or a Certificate in compliance with Section 5(8) of the Act; or in the alternative if the Certificate had been issued to avoid compliance with Section 5(1) of the Act, the said Certificate is unjustifiable, unreasonable and irrational.

The Respondents averred that the notice issued under Section 6 is proof that the Minister considered that there was an urgent need for the acquisition.

The Respondents further averred that the inhabitants of the area who would be using the motorable access to reach their homes have been parking their cars on the main road and causing congestion in that area as well as being a hazard for other road users. The situation needed to be remedied quickly, and this, together with the fact that the road would take some time to build, the 1ST Respondent had no other option than to consider the matter as one urgency. Moreover, the Respondents added, as the numerous negotiations with the Petitioner had failed, and the other persons whose land were to be acquired had already given their consent, in the public interest the 1st Respondent felt that it was not expedient to comply with Section 5(1) of the Act.

The Respondents denied the Petitioner's allegation that as a result of the procedural irregularities, the declaration of the Minister of 25th June, 2002 is null and void and the acquisition is unlawful, and put the Petitioner to strict proof of that allegation.

A Writ of Certiorari has the effect of quashing a decision which may have been by an authority exercising judicial, quasi-judicial or administrative functions, if such decision was taken through an excess or abuse of power or which is illegal. The criteria for deciding which acts or decisions are subject to Certiorari was expressed by Lord Atkin in the case of

R v Electricity Commissioners, ex P. London Electricity Joint Committee Co. (1920) 1 K.B. 171, as -

> "....whenever any body or persons having legal authority to determine questions affecting the posts of subjects, and having the duty to act judicially, act in excess of their legal authority they are subject to the following jurisdiction of the King's Bench Division."

A Writ of Certiorari is also available to quash or nullify actions or decisions that are ultr vires or in breach of natural justice or where traditionally there has been an error of law on the face of the record. As Lord Slynn suggested in the case of **Page v Hull University Visitor, (1993) 1 ALL E.R. 97 at p. 114b**, the scope of Certiorari may be interpreted widely, when he said:

> *"If it is accepted, as I believe it should be accepted, that Certiorari goes not only for such an excess or abuse of power but also for a breach of the rules of natural justice."*

The interpretation of the duty to act judicially has been widened considerably since the case was decided. Since the case of **Ridge v Baldwin (1964) A.C. 40,** the Courts have interpreted the phrase to include those bodies that have the power to decide and determine matters which affect the citizens. This means that Certiorari generally may be available to review all administrative acts.

The formulation of 'acting judicially' commonly used today is that favoured by Lord Diplock in **O'Reilly v Mackman (1983) 2 A.C. 309**, that '*it is enough to show that the body or person has legal authority to determine questions affecting the common law or statutory rights of other persons'.*

Judicial Review deals primarily with the question of law. Lord Widgery CJ in the case of **R**

v Huntington District Council, ex parte Cowan (1984) 1 WLR 501, identified a proper case for judicial review-

> *"as being a case where the decision in question is liable to be upset as a matter of law because on its face it is clearly made without jurisdiction or made in consequence of an error of law".*

I will now address the issues raised by the parties.

1. **Did the Minister fail to serve on the Petitioner a copy of intended acquisition published in the Gazette and Nation newspaper in compliance with Section 4(1)(c) of the Act**?

Section 4(1)(c) of the Acquisition of Land in the Public Interest Act Cap. 1A is as follows:

"Where it is necessary to acquire any land under this Act, the Minister shall –

(a) *publish in the Gazette a notice of intended acquisition of the land;*
(b) *cause to be published in a local newspaper on three consecutive days a copy of such notice; and*
(c) *cause to be served on any person who, on information available to the Minister, has an interest in the land a copy of the notice intended acquisition published under paragraph (a).*

In its Statement of Defence the Respondents denied that the Minister failed to serve a copy of the notice of intended acquisition published in the Gazette and Nation newspaper on the Petitioner in compliance with Section 4(1)(c) of the Act and put the Petitioner to strict proof

of that allegation.

I do not believe the denial of the Respondents serves in any way to disprove the allegation of the Petitioner on that point. It is not incumbent on the Petitioner to show proof as I believe that the onus is on the Respondents to prove, at least on a balance of probabilities that they did indeed serve on the Petitioner a copy of the notice of intended acquisition as published in the Gazette and Nation newspaper. This is a statutory requirement necessary in the process of acquiring land in the public interest and it must be fully complied with.

For reasons stated above, I find that the Minister failed to comply with Section 4(1) (c) of Acquisition of Land in the Public interest Act 1996.

2. ***Did Minister furthermore fail to give a description of the land intended to be acquired as required by Section 4(2)(a) of the Act, as the notices which had been published in the Nation and Gazette only refer to a plan which can be inspected in the office of the Director of Land Management. Second Floor, Independent House, Victoria, Mahe?***

Section 4(2) states as follows:

"A notice under subsection (1) shall state –

(a) *the description of land intended to be acquired;*

the purpose for which it is necessary to acquire the land; and

(b) *that it is intended to acquire the land within such period not exceeding 180 days as may be specified in the notice".*

It is evident that the law requires that in a Notice of Intended Acquisition the description of the land intended to be acquired and the purpose for which it is necessary to acquire that land must be stated in the notice. It must likewise be specified in that notice that the land is intended to be acquired within such period not exceeding 180 days.

It is my considered belief that there are no two ways to go about this in order to comply with the statutory requirements contained in Section 4(2)(a) of the Act. It simply has to be done as the law requires it to be done. It is also my belief that even the Respondents stated that the notice published in the Gazette had a schedule attached to it which gave the measurements of the different portions to be acquired from the three plots to be used for the road, this to me is not ample description of the land to be acquired. The fact that the notice may have stated that the plan of the area can be inspected at a specific place, and although it went on to extend to any interested an opportunity to get further information, is neither here nor there. The law clearly requires that land to be acquired must be described in the very notice itself and not to invite interested parties to go anywhere to get a description of the land to be acquired.

In view of the reasons given above, I find that the Minister failed to comply with the provision of Section 4(2)(a) of the Act.

3. **Did the Minister fail to serve a copy of the notice, dated 25th June, 2002, in compliance with Section 6(1) of the Act?**

> *"Where the Minister certifies that there is an urgent need for the acquisition of any land in the public interest and that it is not expedient to comply with subsection (1) in relation to that land shall not affect the legality of any acquisition of the land under Section 6".*

Section 6(1) states:

> "Where the Minister fails to enter into an agreement for the acquisition of any land under Section 5 not less than 10 days before the expiration of the period specified in the notice of intended acquisition in relation to that land or where the Minister has granted a certificate under Section 5(8) in relation to that land, the Minister may, before the expiration of that period, by notice in the Gazette declare that the land is acquired for the purpose specified in the notice of intended acquisition in relation to that land".

There was a letter from the Minister to the Petitioner dated 24th June, 2002 notifying the Petitioner that 226 metres of land from Parcel H4795 was acquired for the purpose of road access. To that letter was attached an original of the notice which was to be published in the Nation newspaper on 26th, 27th, and 28th June, 2002 and in the Official Gazette of 1st July, 2002. Proofs of those notifications are before the Court.

I find that the Minister complied with the statutory requirement of Section 6)(1) of the Act and hence there is no merit in the contention raised by the Petitioner.

Evidently, the Minister did not comply with that provision of the Act in that he did not issue any certificate as required by Section 5(8) of the Act. I make this finding because such certificate was neither pleaded nor produced to Court in evidence.

4. **Did the Minister furthermore fail to give a description of the land intended to be acquired as required by Section 6(3) of the Act?**

Section 6(3) states:

> "The notice under Subsection (1) shall state a description of the land or interest in the land acquired under Subsection(1)".

I have already addressed this point and I here maintain my finding made earlier that the

Minister failed to properly describe the land to be acquired. The approach to the question of the description of land adopted when the notice of intended acquisition was published under Section 4 of the Act was in similar pattern when the notice under Section 6(3) was published.

I find that the Minister failed to comply with Section 6(3) of the Act.

5. **Did the Petitioner go to inspect the plan at the place mentioned and he was informed that there were no plans to be inspected?**

There is no statutory requirement either for a plan of the land intended to be acquired shall be laid at any Ministry or for any interested party to come and inspect. If the plan forms part of the description required by law, then that plan ought to be published in the Gazette and Newspaper.

6. **Did the Minister furthermore fail to serve and publish a notice to treat under Section 5(1) of the Act or a Certificate in compliance with Section 5(8) of the Act; or in the alternative if the Certificate had been issued to avoid compliance with Section 5(1) of the Act, the said Certificate is unjustifiable, unreasonable and irrational?**

Section to Subsection (8), the Minister shall, after the publication of a notice of intended acquisition under Section 4 –

(a) *Cause to be served on every person served with the notice of intended*

acquisition under Section 4 a notice inviting the person to treat with the Minister for the sale of the land to the Republic hereafter in this Act referred to as the "notice to treat";

Publish in the Gazette the notice to treat; and

Cause to be published in a local newspaper on three consecutive days a copy of the notice to treat".

The Respondents averred that the inhabitants of the area who would be using the motorable access to reach their homes have been parking their cars on the main road and causing congestion in that area as well as hazard for other road users. The situation needed to be remedied quickly, and this, together with the fact that the road would take some time to build, the 1st Respondent had no other option that to consider the matter as one of urgency. Moreover, the Respondents added, as the numerous negotiations with the Petitioner had failed, and the other persons whose land were to be acquired had already given their consent, in the public interest the 1st Respondent felt that it was not expedient to comply with Section 5(1) of the Act. With respect, that is not the law.

As far as the provision of Section 5(1) of the Act is concerned, I find that the Minister neither ever caused to be served on the Petitioner a "notice to treat" inviting the Petitioner to treat with the Minister for the sale of the land nor did the Minister caused to be published in a local newspaper on three consecutive days a copy of the "notice to treat"

7. **Were there procedural irregularties, as a result of which the declaration of the Minister of 25th June, 2002 is null and void and the acquisition is unlawful?**

In conclusion I find the following procedural irregularities:

(a) *I find that the Minister failed to comply with Section 4(1) (c) of Acquisition of land in the Public Interest Act 1996.*

(b) *I find that the Minister failed to comply with the provision of Section 4(2)(a) of the Act.*

I find that the Minister did not comply with that provision of the Act in that he did not issue any certificate as required by Section 5(8) of the Act.

I find that the Minister failed to comply with Section 6(3) of the Act.

I find that the Minister neither ever caused to be served on the Petitioner a "notice to treat" inviting the Petitioner to treat with the Minister for the sale of the land nor did the Minister caused to be published in a local newspaper on three consecutive days a coy of the "notice to treat", hence I find that the Minister failed to comply with the provision of Section 5(1) of the Act.

As a result of the procedural irregularities stated above, I hereby rule that the declaration of the Minister of 25th June, 2002 is null and void and the acquisition is unlawful.

I accordingly issue a Writ of Certiorari quashing the decision of the Minister to acquire 226 meters of land on Parcel H4795 and declare that the acquisition of land of the Petitioner is unlawful , and null and void.

I award costs to the Petitioner.

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B. RENAUD

JUDGE

Dated this 9th day of December 2009