

IN THE SUPREME COURT OF SEYCHELLES

Civil Side: MC66/2012

[2017] SCSC 201

Between

INA LAPORTE

Of Greenwich, Mahe

As an heir to the estate of Jean Laporte

FIRST PETITIONER

BARNET FANCHETTE

Of Beau Vallon, Mahe

[Joint Executor and heir to the Estate of Celestine Monnaie]

Herein representing all the other heirs

SECOND PETITIONER

YARDLEY MONNAIE

Of Bel Ombre, Mahe

[Joint Executor and heir to the estate of Celestin Monnaie]

Herein representing all the other heirs

THIRD PETITIONER

Versus

THE MINISTER OF LAND USE AND HOUSING

Independence House, Victoria, Mahe

RESPONDENT

Heard: 1 February 2017

Counsel: Mr Elvis Chetty for first petitioner
Mrs Alexia Amesbury for second & third petitioners
Mr Benjamin Vipin, Senior State Counsel for respondent

Delivered: 6 March 2017

JUDGMENT

McKee J

- [1] This application by the Petitioners is raised in terms of the Supreme Court [Supervisory Jurisdiction over Subordinate Courts, Tribunals and Adjudication Authorities] Rules “hereinafter referred to as “the Rules”. We shall hereafter call it the application for judicial review. In effect it is an application for a Judicial Review of the decision of The Government of Seychelles through its department, The Ministry of Land Use and Housing, to acquire land in La Digue under the provisions of the Acquisition of Land in the Public Interest Act [hereinafter referred to as “the Act”]. Intimation of this intention to acquire first came to the attention of the public by Notice No 604 of Government Gazette dated Tuesday 12th June 2012. The description of the land was as set out in the Schedule attached to the Notice, namely, “*Parcels of land namely,*
- [2] LD 1812 – 863 sq. metres, LD 1813 – 889 sq. metres, LD 1814 – 621 sq. metres, LD 1815 – 1,291 sq. metres, LD 1816 – 789 sq. metres situated in La Digue Seychelles as more particularly described in survey diagram and part of LD 1872 approximately 4011 sq. metres described by UO325, NM28,NM40,[TA]TC25,UN615 and UJ598 on a layout plan which can be inspected in the office of the Director, Land Acquisition, Valuation and Sales, 2nd Floor, Independence House.
- [3] I will refer to the areas marked LD 1812 to LD 1816 as “the 5 parcels of land”. An area of 4011 sq. metres is approximately 1 acre. It is not an especially large area of ground.
- [4] The Notice stated that it was the intention to acquire the 5 parcels of land in the public interest, namely for the purpose of housing and land bank development. In accordance with the provisions of the Act the Respondent gave formal notice that he intended to treat with the owner or any other person having an interest in the land and any such person should, within thirty days, furnish particulars of their interest in the 5 parcels of land, the amount for which he or she would agree to sell their interest in the 5 parcels of land and furnish the particulars of any other person who has an interest in the 5 parcels of land and the nature of the interest. Such persons were invited to inspect a lay-out plan at the offices of the Respondent. The First and Second Petitioners intimated their interest by letter dated 3rd July 2012 declaring that they were the legal and rightful owners of the

land. By Notice in Gazette dated 6th August 2012 the Respondent declared that the land had been acquired in the public interest for housing and land bank development.

- [5] This declaration triggered the Application for Judicial Review dated and lodged in the Registry of the Supreme Court on 6th September 2012. The Application sets out the basic grounds of objection. The Petitioners claim ownership by deduction of title from Jean Laporte who held title in 1808, through his son Celestin Monnaie and hence to the Second and Third Petitioners as executors of Celestin Monnaie. The Petitioners further aver that the Respondent illegally surveyed the land prior to the intimation of acquisition and that the correct boundaries of the whole property of which the 5 parcels formed part were, as established, in 1808. The Petitioners, at the time of their objection to the proposed acquisition, also made enquiry as to a possible sum in respect of compensation although they also declared that they had no intention of selling their interest in the property. The next step in the procedure was the Notice in the Gazette of 6th August 2012 by the Respondent declaring that the land had been acquired.
- [6] In their Application for judicial review the Petitioners averred that by proceeding directly to formal acquisition without fully canvassing the views of the executors, heirs and successors of the estate of Celestin Monnaie amounted to a material irregularity. The Respondent drew attention to the fact that the rights of some eighty families, that is, three hundred individuals, were deprived of rights of inheritance and property since they were not allowed the opportunity to fully state their objections. Furthermore, the Respondent should have kept in view that the sheer number of persons having rights through the estate of Celestin Monnaie placed their interests on an equal footing with the rights of the general public in whose name the land was being compulsorily acquired. It was averred finally that by acting in the way it did the Respondent acted illegally, unreasonably and contrary to the rules of natural justice. In these circumstances the Court should exercise its supervisory jurisdiction and review the decision of the Respondent to acquire the land.
- [7] There followed an interlocutory application dated 6th September 2012 with Replies lodged. On 7th August 2013 a Court Order was granted ordering a survey of the land by Mr Michael Leong, Surveyor, and that all transactions involving the land were prohibited

to facilitate the survey. The Survey Report of Mr Michael Leong dated 4th August 2014 was produced to the Court and is a production in the case. I took carriage of the matter in July 2014. At one stage the First Petitioner sought permission to withdraw but later, on the advice of her counsel, continued to be a party to the application. On 5th November 2015 I again reminded parties that the thrust of the application was whether the original decision of the Respondent to acquire was a reasonable and lawful decision.

- [8] By December 2015 the formal written Objections to the Application for Judicial Review had still not been laid before the Court. By February 2016 a further person, one Brian Charles Hoffman, entered the arena by applying to be an Intervenor in the original Application. By Ruling dated 20th May 2016 I dismissed the application by Mr Hoffman.
- [9] In the productions admitted as exhibits in the case is a letter dated 8th November 2012 signed by a Y. Choppy, Acting Principal Secretary in the Ministry of Land Use and Housing addressed to the First Petitioner and Counsel for the Second Petitioners stating as follows”*The documents submitted by your side to date do not clearly disclose your interest in the land immediately prior to publication of the acquisition notices. I also put on record that we have not received any claims for compensation for your alleged interest.*”. It would seem that this was a reply to the formal letter to the Respondent dated 3rd July 2012 intimating objection to the proposed acquisition.
- [10] The formal Objections to the originating Petition with supporting affidavits from Mr Dennis Barbe, Director of Lands Use and Housing dated 20th January 2016 and Ms Bernadette Boniface, Senior Lands Officer with the Ministry dated 27th July 2016 were filed with the Supreme Court on 27th July 2016. The Respondent averred that the Petitioners had no *locus standi* to file the Petition bearing in mind the provisions of sections 7 and 8 of the Act. Furthermore the Petitioners could not substantiate their title to pursue this matter by production of deeds and official records in the Land Registry in either the old or new Land Register. In fact the Land Register showed that the title to the land was now held by a Charles Berman and Mrs Diana Margaret Taylor who purchased the 5 parcels of land from a Benjamin Camille, conform to an Agreement dated 29th June and registered on 30th June both 1972, a copy of which agreement was attached to the

formal Objections. In respect of the Petition the Respondent replied in the following terms, that at the time of acquisition the land was vested in the said Charles Berman and Mrs Diana Margaret Taylor. It would also seem that the 5 parcels of land had been later conveyed by Berman and Taylor to further person named Peter John Gooley. As a result a copy of the formal Notice to Acquire had been served on the Attorney, Mr R. Valabhji, the last known address of Gooley. Simply put, the Petitioners sought to rely on title acquired over the years down from the original owner or proprietor, Jean Laporte. The Respondent took the position that the title to the 5 parcels of land had passed from the Monnaie family to Berman and Taylor and this could be supported by modern cadastral plans prepared in accordance with the Land Survey Act 1964 and Land Registration Act 1967 showing the 5 parcels of land in question together with the said Agreement registered in 1972. Accordingly, the Petitioners and their heirs had no right title and interest in the 5 parcels of land.

- [11] Thereafter, Closing Submissions dated 16th January 2017 were lodged in the Supreme Court by the Second Petitioner. The First Petitioner adopted the Submissions of the second and third Petitioners. The Answering Submission by the Respondent was lodged in the Supreme Court on 3rd February 2017. The Submissions subject, to some small amendments, differed little in substance from the terms of the original Application and Objections.
- [12] The Petitioners highlighted the fact that the formal Objections to the originating Petition were lodged some 4 years after the lodging of the Petition. The Petitioners relied on the terms of the originating Petition. The Petitioners further averred that no great reliance could be placed on the averments in the Objections or final Submission since the reference to plans was not supported by title deeds or other property documents. Furthermore, no weight should be placed on any cadastral survey plans since their preparations was in breach of the Adjudication of Title Decree. The Petitioners expressed great doubts as to the information relating to the selling off of plots of land in the immediate area of the 5 parcels of land over the past years.

[13] The final Submission of the Respondent identified the following salient points. It was submitted that the 5 parcels of land, immediately prior to their compulsorily acquisition, were registered in name of Berman and Taylor and hence the Petitioners have no right title or interest in the 5 parcels of land. The appointment of the Second and Third Petitioners as executors had not been satisfactorily proved. Title to land which remained vested in the Petitioners had not been updated in the new Land Register. The Respondent was confident that he had complied with the Act in acquiring the 5 parcels of land and had fully investigated the position through the Land Register. He referred to the need now to comply with the important developments in land title through the Land Survey Act and the Land Registration Act and the requirement now to prepare cadastral plans for property. Finally the Respondent submitted that a judicial review is a review of the manner in which a decision, in this case an administrative decision, was made and should not look to the merits of the case. In this case the Petitioners had no interest in the land, no *locus standi*, and hence were not entitled to pursue this claim.

[14] FINDINGS.

[15] This is an application for a judicial review of the decision by the Respondent to issue the Order of Acquisition dated 6 August 2012. This is to consider the procedure adopted and fairness exhibited by the Respondent in coming to the decision he did. The grounds of challenge in judicial review can be divided basically into the following categories, illegality, irrationality or unreasonableness, procedural impropriety and fairness.

[16] The First Petitioner applies for a review in her personal capacity as a direct descendant of Jean Laporte, the first title holder of the estate in La Digue, which was subsequently divided into 3 parts and conveyed to his sons. Her personal claim is imprecise and without specification. However she sought to adopt the arguments and claims of the Second Petitioners who appeared in the capacity of executors of Celestin Monnaie and I consider any interest she may have jointly with the claims of the Second and Third Petitioners. The Second and Third Petitioners frame their application in general terms. Their application is as follows. They are the executors of the late Celestin Monnaie and in that capacity hold title to the estate lands of the late of Celestin Monnaie pending

distribution of the estate to the rightful beneficiaries. The Second and Third Petitioners argue that the 5 parcels of land referred to in this application are part and portion of the estate lands of Celestin Monnaie and hence it follows that they have an interest in any disposal or conveyance of the 5 parcels of land.

[17] There is also a second limb to the argument of the Second and Third Petitioners and this can be found at paragraph 32 of the originating Petition. The argument runs as follows. The Respondent states that he has acquired the 5 parcels of land *in the public interest*. The Second and Third Petitioners represent over 80 families, with a total number of perhaps 300 persons and their interests represent a sizable proportion of the total population of La Digue. Hence the interest expressed by the Second and Third Petitioners has also an element of *public* interest to it. My enquiries with the National Bureau of Statistics indicates that the population of La Digue and outer islands is 3700 excluding foreign residents. The Respondents in their counter-arguments did not appear to address the point of possible public interest.

[18] The Respondent agrees that the 5 parcels of land originally were included in the lands and estate of Celestin Monnaie. He avers that he can identify the specific plot of ground on the estates of Celestin Monnaie in which the 5 parcels of land are located. He avers that this plot, which included the 5 parcels of land, has already been the subject of a conveyance to a third party who now holds title to it. It follows, he argues, that since the 5 parcels of land no longer form part of the estate of Celestin Monnaie, the Second and Third Petitioners, as executors of Celestin Monnaie, are no longer vested in or have an interest in the 5 parcels of land. It follows that the executors and the First Petitioner have no interest in the land which has been acquired. They have no *locus standi* to bring the application for a judicial review before this court.

[19] Needless to say the Petitioners entirely disagree with this approach.

[20] I will deal firstly with some preliminary issues.

[21] The Respondent averred that there was no documentation confirming the appointment of the Second and Third Petitioners as Executors of Celestin Monnaie. This is incorrect. At

Exhibit LAP14 of the Petitioners' exhibits is the Order of the Court dated 7th February 2011 appointing the Second and Third Petitioners as Executors of Celestin Monnaie. The Second and Third Petitioners are the great great great grandchildren of Celestin Monnaie. The application for appointment of executors lists over 100 ultimate beneficiaries who are listed and named. At the date of appointment it was averred that Celestin Monnaie owned immovable properties in La Digue.

[22] The Petitioners argued that the Respondent is required by rule 12[1] of the said Rules to lodge his objections in writing within 6 weeks from the date of Notice granting the right to proceed with the judicial review is served on the Respondent. The Respondent failed to do so and in fact the Objections were lodged some 4 years after the initiation of the proceedings. While it is correct that the period of 6 weeks is stated in the rule, this is qualified by the proviso "*unless the Supreme Court directs otherwise.*" While it may not be the subject of an express ruling I allowed this long extension of time to allow full argument to be laid before the court. I dismiss this argument.

[23] The Petitioners further argued that in instructing surveys of the whole lands and the 5 parcels of land the Respondent acted in contravention of the Land Survey Act, the Land Registration Act and the Adjudication of Title Decree and accordingly the surveys and resultant plans should be treated as having no force and effect. I will deal with this further in the judgment.

[24] The Respondent averred that the Petitioners cannot succeed in their application since it is raised under the wrong section of the Act or out with any provision in the Act. It may be that he is referring to section 7 of the Act where it is provided that redress should be sought in the Constitutional Court. I disagree. The appropriate section in the Act is section 8 which provides that within 30 days of the Notice of Acquisition, ie, 6th August 2012, a party seeking redress applies to "the Court". In the interpretation clause the "Court" means the Supreme Court. The Petitioners lodged their application to seek a judicial review on 6th September 2012. It could be argued that the 30 days referred to in section 8[1] of the Act expired on 5 September but balanced against that is the fact that the Petitioners are allowed 3 months under rule 4 of the Rules to lodge their Petition,

namely their application for judicial review. I find that this present application is in terms of the Rules and the Petitioners are within the statutory time-limit of 3 months. The Petitioners are also in the correct forum.

[25] I look further into the application by the Petitioners that they have an interest in the 5 parcels of land and are thus entitled to be persons with whom the Respondent should treat in terms of section 5 [5] of the Act.

[26] The said Application of appointments of executors dated 19th October 2010 only stated that Celestin Monnaie owned immovable properties. I take that this means numerous properties in La Digue but no schedule of properties was attached. In the originating Application for Review at paragraph 5 it is averred that Celestin Monnaie was the heritable proprietor of 36 acres of land on La Digue. The Petitioners say that under the rules of succession the executors of the deceased Celestin Monnaie have established their right title and interest to land of which the 5 parcels of land form part. I now look to the closing written submissions of the Petitioners. They again repeat the assertion that they have acquired the right title and interest in the lands of the late Celestin Monnaie of which the 5 parcels of land form part following on from their appointment as executors in the said estate. Again, however, no schedule of specific properties is produced.

[27] In respect of the Respondent's objections and closing submission the Petitioners state that any boundaries fixed by survey and cadastral activity are without legal effect, no supporting title deeds have been produced and the Respondent has not complied with the provisions of the Land Survey Act, the Land Registration Act and the Adjudication of Title Decree. In particular any earlier transfers of portions of the estate of Celestine Monnaie have no force or effect.

[28] I look now to the Objections and the final Submission of the Respondent. The main thrust of the Objections is that the Petitioners have not clearly established their right title and interest specifically in the 5 parcels of land. The Respondent stated that any precise areas of land at present vested in the executors are not reflected in any entry or entries in the New Land Register. The Respondent averred that if the executors disagree with the formal conveyance of portions of land to Berman and Taylor or to the earlier proprietor

by name of Camille they should have instituted a formal challenge at an earlier date. The Respondent averred that the executors are “barred by limitation” from pursuing this issue and they are now using this present procedure to try and obtain some investigation of title. Hence the Respondent averred that this application for review is not in good faith and should be dismissed.

[29] The Respondent further averred that the Land Survey Act 1964 requires that all surveys of land are required to comply with the Act which provides for all cadastral or property surveys to be based on a fixed boundary system. The Respondent submitted that this is a more accurate method of measurement than the earlier system which was based on general boundaries. The Land Registration Act 1967 required that all surveys had to comply with the provisions of the Land Survey Act and once surveyed were given a specific number, which in La Digue is “LD” followed by a number. The new survey details are then recorded shown on a Registry Map[Cadastral] record. This would allow registration of title within the new Land Register. The Respondent did agree that although a survey could be carried out, on occasion, the follow-up procedure in the new Land Register did not occur. If previously unsurveyed land had to be surveyed under the new system an adjudication process had to be followed. This procedure required examination of old surveys and boundary markers. All interested parties would be invited to give their views. If agreement was reached the survey would be approved. If not, the proposed new survey procedure would be stopped. This, then, has been the general procedure to be followed since 1964.

[30] The Respondent had applied these considerations in the present application. He found that he could superimpose with acceptable accuracy the old boundary description of the whole property of Jean Laporte, which included the lands passed down to Celestin Monnaie, on to the cadastral plan of La Digue. This accuracy was reinforced when matched with individual plots **within** the whole property and other plots **outside** the said whole area where surveys and boundaries of the plots had been approved in terms of the adjudication procedure and registered with LD numbers. The Respondent then referred me to his exhibit R1-5 which shows that there have been many adjudications in the said whole area with separate plots having been given LD numbers.

[31] It was further submitted by the Respondent that the 5 parcels of land were also subject to the adjudication procedure and in 2008 were granted plot numbers LD1812 to LD1816 which are identifiable as delineated in green on the plan numbered R1 to R5. On looking at plan R1 to R5 the delineated area in green is to the east of what looks like a path or roadway and just south of a bend. This plan R1 to R5 also has superimposed on it and marked in red Lot 4 [Alice, Emma and Edgar Uzice (3.4 arpents), lot 5 (Edgard Uzice (3.4 arpents), Lot 6 Durosel Monnaie (4 arpents), lot 7 (Celestine Monnaie (6 arpents) and Lot 8 (Estra Mellon (6 arpents). There is no mention of ownership of the area of land immediately to the south of these 5 lots. I take this into account.

[32] The Petitioners alleged that the claims of the Respondent are not supported by any title deed. I disagree. There is produced, as a documentary exhibit, a copy of an Agreement between Benjamin Camille and Mrs Edith Leona Monchouguy [Vendors] and Charles Berman and Mrs Diana Margaret Taylor [Purchasers] dated 30th June 1972 and registered in the Office of the Registrar General also on 30th June 1972 which copy is certified as correct by the Registrar General on 20th June 2003. The price is recorded as Rs 55,000 in Cash. The subjects of sale are 3 contiguous portions of land. I look in particular at the third portion of land sold and the description reads as follows: *(3) a portion of land of the extent of six arpents situate at La Digue island, place called Anse Reunion bounded as follows: "On the North by Lot No. six belonging to Durasel Monnaie with a path two and a half feet wide in between: on the East by Lot Number eight belonging to Madame Estras Evanoff Mellon; on the South by Julius Mellon; and on the West by the Lot No. five belonging to Edgar Jean Desire Uzice".* This written description clearly accords with "Lot 7 – Celestin Monnaie (6 arpents) on the plan. Likewise I can find that the area of ground in portion No.1 in the Agreement conforms to Lot 5 on the plan R 1- 5. As far as portion No 2 as described in the Agreement is concerned, I cannot relate that to any particular lot in the plan R1-5. This accords with the averment 27 in the Objections of the Respondent. The Respondent is also able to relate a deduction of title relating to the area disposed to Berman and Taylor. By reference to the old Land Register, portion No 3 was sold by Celestine Monnaie to a R. G. Naidoo [Volume 25 Number 217]. The said portion was then sold on to Benjamin Camille who then sold on the said portion to Berman and Taylor.

- [33] I also keep in view Article 2262 [Prescription] of the Civil Code of Seychelles Act which reads as follows: “All real actions in respect of rights of ownership of land or other interests therein shall be barred by prescription after twenty years whether the party claiming the benefit of such prescription can produce a title or not and whether such party is in good faith or not”. In my opinion, if the Petitioners were to challenge the title of the 3 portions of land of which portion 3 forms part, and which, on the face of it, had been firstly disposed by Celestin Monnaie from his lands, they would first have to overcome the provisions of Article 2262. The prospect of success could be very limited indeed.
- [34] I also look to 2 plans prepared by Surveyor D. Barbe dated 11/1/2008 and 20/11/2014. These two plans clearly show that the 5 parcels of land lie to the south of the bend in the pathway referred to and to the east of the path. I also look to the affidavit in Support of the Respondent’s case by Yves Choppy, Principal Secretary of the Ministry of Land Use and Housing dated 24th February 2013. He confirmed that the 5 parcels of land were, as per official records held at the Land Registry, properties that belonged to Charles Berman and Diana Taylor as surveyed in 2005. A Summary of Survey attached to the Affidavit explained that in 1981 Charles Berman, as owner, had requested a survey of the 3 contiguous portions of the land vested in him by the said Agreement. The western part of the lands were firstly surveyed and approved in 1983. The eastern part of the lands of Charles Berman were later surveyed by government surveyors in 2005 given the designations of LD 1812 to LD1816 and this survey was approved in 2008. In both surveys all procedures under the Land Survey Act had been completed. I find that the 5 parcels of land which are the subject of acquisition were included in land disposed originally by Celestin Monnaie to Naidoo and by subsequent transactions came into the ownership of Berman and Taylor. The 5 parcels of land hence no longer form part of the estate lands passed down to the executors of Celestine Monnaie.
- [35] This is a civil matter and the standard of proof is hence on the balance of probabilities and not to the more onerous criminal standard of beyond reasonable doubt.
- [36] The Petitioners have claimed ownership of the 5 parcels of land unsupported by any form of documentation. They simply state that the 5 parcels of land fall within the land held by

the executors of the late Celestin Monnaie. They cannot question in any detail the opposing claim of the Respondent that the 5 parcels of land fall within an area of land which had previously been “hived off” from the land vested in Celestin Monnaie and conveyed by him to a third party and hence to Charles Berman and Diana Taylor.

[37] I have considered the detailed evidence produced by the Respondent. I am satisfied to the required standard that the 5 parcels of land are located to the south of the bend in a path shown in the centre of plan and to the east of the path. I am satisfied that the 5 parcels of land as surveyed fall within the Lot 5 [Edgard Uzice – 3.4 arpents] and Lot 7 {Celestin Monnaie – 6 arpents] as shown in plan [exhibit R1-5]. I am satisfied to the required standard that the whole interest of Celestin Monnaie in the said Lot 7 was conveyed to Charles Berman and Diana Taylor by Agreement in 1972. I am satisfied that Charles Berman and the Government of Seychelles through its Ministry of Land Use and Housing complied with the Land Survey Act and Land Registration Act in having the areas surveyed all in accordance with the provisions of the two Acts, the specific requests for survey by Berman being made prior to the coming into force of the Adjudication of Title Act 1996.

[38] CONSEQUENTLY I am satisfied to the required standard that the Petitioners have no right title or interest in the 5 parcels of land, namely, LD1812, LD1813, LD1814, LD1815 and LD1816. They have no personal interest or interest as executors in this matter. On a review of all the evidence I also find that the Petitioners have not shown to me that there is a public interest element which would allow them to pursue this matter.

[39] ACCORDINGLY, I find that the Respondent rightly concluded that the documents provided by the Petitioners following the publication of the Acquisition Notice did not disclose any interest in the 5 parcels of land. I also note in the correspondence at R2 to R7 at pages [66] and [73] that the Respondent gave written notice to Peter John Gooley of the acquisition proceedings at the law offices of Ramnikal Valabhji, Attorney, on 6th and 28th June 2012 in respect of any possible interest he may have had in the 5 parcels of land. It is more likely than not that the Respondent may have had information that the said Peter John Gooley may have had an interest in the 5 parcels of land and wished to

give him the opportunity to be heard. There is no evidence that Peter John Gooley wished to object.

[40] In all the circumstances, I find that the Respondent acted legally, reasonably and without procedural impropriety. I find that he lawfully declared by Notice dated 6th August 2012 that the 5 parcels of land were acquired in the public interest, namely for the purpose of housing and land bank development all in terms of the Acquisition of Land in the Public Interest Act.

[41] The Petition is DISMISSED with Costs.

[42] I also DISCHARGE the ORDER dated 7th August 2013.

Signed, dated and delivered at Ile du Port on 6 March 2017

C McKee
Judge of the Supreme Court