

IN THE COURT OF APPEAL

GRENADA:

CIVIL APPEAL NO. 3 of 1976

BETWEEN: GRAND ANSE ESTATES LIMITED - Appellant

and

HIS EXCELLENCY SIR LEO VICTOR DE GALE	} Respondents
GOVERNOR-GENERAL OF GRENADA	
THE ATTORNEY-GENERAL OF GRENADA	
MR. SYLVESTER SANDY - AUTHORISED OFFICER	

Before: The Hon. Sir Maurice Davis, Q.C. - Chief Justice
The Honourable Mr. Justice St. Bernard
The Honourable Mr. Justice Peterkin

Appearances: Allan Alexander and D.C. Williams for Appellant
Derek Knight Q.C. and Mrs. E. De Freitas with
him for Governor-General and Authorised Officer
Ernest John - Attorney-General for Attorney-General

1977, July 28, Oct. 7

J U D G M E N T

ST. BERNARD, J.A.:

On the 15th day of April, 1976, the Government of Grenada compulsorily acquired, under the provisions of the Land Acquisition Ordinance, Chapter 153 of the Laws of Grenada, approximately 25 acres of the appellant's land situate at Grand Anse for the purpose of a communal pasture. On the 4th June, 1976, the appellant under the provisions of section 16 of the Grenada Constitution Order, 1973, applied to the High Court by motion for a declaration that the acquisition was null and void being contrary to the provisions of subsection (1)

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of section 6 of the Constitution. Section 6(1) of the Constitution reads:-

"6(1) No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

The trial judge denied the application and held that the provisions of the Land Acquisition Ordinance, Chapter, 153, of the Laws of Grenada were adequate and satisfied the requirements of the constitutional safeguard contemplated by subsection (1) of section 6.

Counsel for the appellant submitted that on a true interpretation of section 6(1) of the Constitution Order there were three pre-conditions necessary to a constitutional acquisition, namely:

- (a) a law applicable at time of acquisition in existence;
- (b) there must be included in that law a provision for prompt payment, and
- (c) the compensation must be full.

He argued that these three pre-conditions were accumulative and the absence of any one made any acquisition unconstitutional, null and void. He further submitted that the provisions of the Land Acquisition Ordinance relating to payment were dilatory and that "full compensation" could not mean the value of the land at a date twelve months prior to the acquisition. The value of the land assessed he stated, must be the value at the date of acquisition. He cited a passage from the

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Constitution of India (5th Ed. p.147) by Dr. Shukla in support.

It will be necessary to review the provisions of the Land Acquisition Ordinance relating to payment in order to ascertain whether or not those provisions satisfy the constitutional requirement of prompt payment and also those relating to assessment of compensation in order to find out whether the constitutional requirement of full compensation is satisfied.

Section 6 of the above Ordinance provides that as soon as any declaration is made under section 3 of the said Ordinance the authorized officer must enter, without delay into negotiations with the owner of the land for the purchase thereof while subsection 2 of this section allows him to do so even before the declaration has been published. I do not think there is any cause for complaint here. Section 7 of the same Ordinance enjoins the authorized officer, as soon as may be after acquisition, if a plan of the land is not available, to set out the boundaries of the land and to issue a notice of acquisition in accordance with the provisions of the section to every person interested in the land. There is no time stipulated in the section within which such notice shall be served.

Counsel for the appellant criticised this procedure and stated that while the negotiations for purchase must be without delay the service of the notice of acquisition was "as soon as may be" and this was an activity of a slower nature. Counsel for the respondent submitted, in respect of this that where no stipulation as to time within which any duty must be performed

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in any Ordinance section 31(b) of the Interpretation Ordinance Ch.149 applied and that duty must be performed with all convenient speed. Counsel for the appellant submitted this was a subjective test and did not apply. Section 8 of this Ordinance empowers the authorized officer if he requires information regarding the interests in the land acquired to serve a notice to the last known place of abode or business of the person concerned and to require such person not less than 21 days after service of the notice to furnish such information. Section 9 enacts that if within three months after entry upon any land, the land is not acquired, then the owner may serve a notice upon the authorized officer requiring the acquisition of the land to be completed, and if such acquisition is not completed within one month thereafter, the acquisition shall be deemed to have been abandoned. Provision is made in section 12 for the appointment of a Board of Assessment by the Governor as soon as it becomes necessary to do so.

In my opinion all these sections which relate to the negotiations for purchase, the service of notices, the abandonment of the acquisition, and the appointment of a Board of Assessment contemplate, on the part of the authorized officer, prompt and ready action. If negotiations for the purchase breaks down, the authorized officer, if he does his duty, will be in a position to inform the Governor during the early stages of the acquisition that a Board of Assessment is necessary and appointment must be made as soon as it becomes necessary. On

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the whole, I am of the view that the provisions of the Land Acquisition Ordinance relating to payment of compensation do not infringe the provisions of section 6(1) of the Constitution Order in respect of prompt payment of compensation.

I find the question as to whether or not the provisions of the same Ordinance relating to compensation infringe the constitutional requirement of full compensation is not without difficulty. Section 19 of the Ordinance reads:-

"19. Subject to the provisions of this Ordinance, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land -

(a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might have been expected to have realized at a date twelve months prior to the date of the second publication in the Gazette of the declaration under section 3 of this Ordinance:

Provided that this rule shall not affect the assessment of compensation for any damage sustained by the person interested by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land;

(b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department;

(c) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to public health, the amount of that increase shall not be taken into account;

(d) where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the

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compensation may, if the Board is satisfied that reinstatement in some other place is bona fide intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;

(e) no allowance shall be made on account of -

(i) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;

(ii) any disinclination of the person interested to part with the land acquired;

(iii) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action;

(iv) any damage, not being in the nature of deprivation of or interference with an easement or legal right, which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put;

(v) any increase in the value of the land acquired likely to accrue from the use to which the land acquired will be put;

(vi) any outlay or improvement of such land which shall have been made, commenced or effected within twelve months before the publication of the declaration under section 3 of this Ordinance with the intention of enhancing the compensation to be awarded therefor in the event of such land being acquired for public purposes.

The problem lies in the provision fixing the value of the land at a date twelve months prior to the date of the second publication in the Gazette. The date of the second publication in the Gazette is the date the land vests absolutely in the Crown and the owner is deprived of all his rights and privileges. Full compensation must mean a just equivalent of the land at the time of acquisition plus any loss incurred by such acquisition plus adequate interest to the date of payment. There could be cases in which the value of the land twelve months before acquisition would amount to adequate compensation. Similarly, I can conceive of cases where within twelve months

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the value of land in certain areas may increase to a large extent. Counsel for the respondent submitted that the mere fact that the value of the land is to be taken twelve months prior to the acquisition does not mean that full compensation will not be given. He stated that land prices do not fluctuate and that the proviso to the section makes provision for the compensation to be adequate. It seems to me that land prices do fluctuate and that the proviso to this section only enacts what the owner would be entitled to if given full compensation without those provisions being enacted. The provision as to the amount of compensation being limited to a date twelve months prior to the date of acquisition may be to ensure that owners of land do not enhance the value of their land with the intention of increasing the compensation. Sub-paragraph (vi) of paragraph (e) of the proviso was certainly enacted for this purpose.

In the State of Madras V. Mudaliar (1965) AIR S.C. 190 cited in Fundamental Rights and Constitutional Remedies Vol. II by V.G.

Ramachandran at page 466 Shah J. observed:

"If the owner is by a constitutional guarantee protected against expropriation of his property otherwise than for a just equivalent, it would be impossible to hold that a law which authorises acquisition of land not for its true value, but for value foreign on some date anterior to the acquisition, on the assumption that all appreciation in its value since that date is attributable to purposes for which the State may use the land at some future date must be regarded as infringing the fundamental right. The right which is guaranteed is undoubtedly the right to a just indemnification for loss and appreciation in the market value of the land because of the proposed acquisition may in assessing compensation be ignored. Even the Land Acquisition Act provides for assessment of compensation on the basis of market value of the Land not on the date on which the interest of the owner of the land

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is extinguished under Section 16 but on the basis of market value prevailing on the date on which the notification under Section 4(1) is issued. Any principle for determination of compensation denying to the owner all increments in value of between a fixed date and the date of issue of the notification under Section 4(1), prima facie be regarded as denying him the true equivalent of the land which is expropriated and it is for the State to show that fixation of compensation on the market value on an anterior date does not amount to a violation of the constitutional guarantee".

I am of the view that the provision in Section 19 of the Land Acquisition Ordinance which places a limitation on the value of the land acquired to a value twelve months prior to the date of acquisition is as it stands, an infringement of a fundamental right to full compensation enshrined in Section 6(1) of the Constitution Order and therefore that provision in the Ordinance, on the face of it, is ultra vires to that extent.

The Land Acquisition Ordinance, however, is an existing law within the provisions of subparagraph (1) of paragraph 1 of Schedule 2 to the Constitution Order and therefore the provision in section 19(a) relating to the market value of the land twelve months prior to the date of acquisition must be construed from the commencement of the Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution. It appears that the intention of these provisions is to secure the continuance of the validity of an existing law in so far as is possible. In order to construe Section 19(a) and to bring it into conformity with section 6(1) of the

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Constitution then the compensation to which the appellant would be entitled must be compensation assessed on the market value of the land at the date of acquisition. Although I say that the appellant's rights have been infringed, I am of the view that because of the Transitional Provisions set out in Schedule 2 to the Order the acquisition is not null and void but the appellant is entitled to an order that the compensation must be assessed on the market value of the land at the date of acquisition.

Section 21 also places a limitation in respect of the interest to be awarded the owners by the Board. The rate of interest is fixed at five per centum. Counsel for the respondent submitted that this should have been raised in the lower court and that it was for the appellant to show that it did not amount to full compensation. In my view since there is that limitation in the section it was for the respondent to show that five per centum was full compensation. In my opinion the interest payable must be an interest at a rate applicable to give the expropriated owner a just equivalent of his loss at the time of the expropriation and not a rigid and fixed rate whatever his loss may be. The Board of Assessment hands are tied in this matter and whatever the loss of the owner it cannot award any interest at a higher rate. It would have been different if the provision empowered the Board to fix five per centum or such other rate as would compensate the owner for the loss occasioned by the acquisition. I am of the opinion that this section imposes a fetter or limitation on the Board, whatever the evidence

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may be, and is repugnant to, and in conflict with, section 6(1) of the Constitution Order, 1973. I would treat this section in the same manner as section 19(a) and construe it in such a way as to make it conform with the provisions of section 6(1) of the Constitution Order and order that the appellant is entitled to interest on the sum assessed as the full value of the land at such a rate as would compensate him for any loss occasioned by him from the date of the acquisition. These sections ought to be amended accordingly.

I would refuse the declarations sought by the appellant at paragraphs (a) and (b) of the relief and in respect of paragraph (c) allow the appeal in part and make the orders stated in the last two foregoing paragraphs.

(E.L. St. Bernard)
JUSTICE OF APPEAL

DAVIS, C.J.

The judgment of St. Bernard J.A. expresses my views and I have no wish to be repetitious. I am content to say I agree.

(Sir Maurice Davis)
CHIEF JUSTICE

PETERKIN, J.A.:

The facts and circumstances giving rise to this motion have been accurately set out by St. Bernard, J.A. in his judgment and do not call for any further comment.

The Constitution of Grenada has raised the obligation to pay compensation for the compulsory acquisition of property to the status of a fundamental right and declared that, "no property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

The issue which falls to be considered is whether or not the Land Acquisition Ordinance is a law which makes provision for prompt payment of full compensation for property compulsorily acquired in compliance with Section 6(1) of the Grenada Constitution. Like St. Bernard, J.A. I have little difficulty in concluding that it does make provision for "prompt" payment of compensation. I accept the conclusions arrived at by him for the reasons which he has given. The Ordinance in my opinion strikes a note of urgency throughout, and contemplates prompt payment being made provided regard is had to the exhortations contained in the various sections of the ordinance by those enjoined to carry them out. The difficulty arises with regard to the second limb of the issue, namely, whether the ordinance does provide for "full" compensation for property compulsorily acquired in compliance with section 6(1) of the Grenada Constitution.

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Section 19 of the Land Acquisition Ordinance lays down the rules which shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land. The first rule reads as follows:-

19(a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might have been expected to have realized at a date twelve months prior to the date of the second publication in the Gazette of the declaration under section 3 of this Ordinance:

Provided that this rule shall not affect the assessment of compensation for any damage sustained by the person interested by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land.

The objection taken to this rule is that it fixes the value of the land as the amount which the land, if sold in the open market by a willing seller, might have been expected to have realised at a date twelve months prior to the date of the second publication in the Gazette of the declaration under Section 3 of the Ordinance which is the date on which the land vests absolutely in the Crown.

Reference to the Constitution of India shows that it also raised this obligation to pay compensation for the compulsory acquisition of property to the status of a fundamental right. It declared that a law that does not make provision for payment of compensation shall be void. In the case of the State of W.B. v Mrs. Bella Barnergee, 1954 S.C.R., 558, the Court held that the principles governing the determination of the amount

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to be given to the owner must ensure that what is determined as payable must be compensation, that is a just equivalent of what the owner has been deprived of, i.e. equivalent in value, the time for the determination of value being the date on which the deprivation of property takes place. Chief Justice Sastri held that a law fixing the compensation on the basis of market value on a date two years anterior to the enactment of the law had no relation to the value of the land when it was acquired many years later, as it deprived a person of value of the land appreciated in normal course of time as distinct from temporary or artificial increases in value. The learned Chief Justice stated;

"Any principle for determining compensation which denies to the owner this increment in value cannot result in the ascertainment of the true equivalent of the land appropriated."

Commenting on this aspect of the law the learned author on The Indian Supreme Court and The Constitution has this to say:

"In our submission, the lacuna crept in when the Framers dropped the word 'Just' preceding the word 'Compensation' as a result of which the term 'Compensation' has become absolute in Cl.2 to mean equivalent in value and nothing short of that. Had the word 'Just' been inserted to precede it, the term would have become relative and left considerable scope for the Court to circumvent its liberal meaning by taking into consideration the present requirements of the society and the objects of the constitution."

The term used in the Grenada Constitution is the term "full" compensation. This in my view would mean "complete, entire, to the utmost extent." The word "full" is in my opinion even stronger than the word "adequate", concerning which

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the learned author on Fundamental Rights and Constitutional Remedies, in dealing with recent Judicial trends on compensation, states:

"It must be remembered that the Metal Corporation case posits that fairness or justness of Compensation is something different from 'adequacy' of compensation. 'Adequacy' stipulates a mathematical accuracy as to the exact value. 'Fairness' or 'justness' of compensation is far different, as such compensation may be just less than adequate but not far less than adequate."

It is my opinion that the law providing for compensation to justify itself has to provide for payment of the equivalent amount at the time of acquisition to the property acquired, or lay down principles which lead to that result. For the reasons stated, in my view the Land Acquisition Ordinance in its present form is not such a law.

I do not think it necessary to deal with the further question of interest as provided for in Section 21 of the Ordinance save to state that I would agree with the conclusions arrived at concerning this aspect by St. Bernard, J.A..

The Land Acquisition Ordinance is, however, an existing law, and as such should not be struck down, but rather read and construed in accordance with the Transitional Provisions in Schedule 2 to the Order dealing with existing laws. It should in my view be construed with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution and the Courts Order.

Accordingly, the acquisition in my opinion would not be

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null and void, and I would refuse the declarations sought at paras (a) and (b) of the Relief. I would, however, grant to the Appellant a declaration under para (c) of the Relief that the compensation to which he is entitled must be payment of the equivalent amount at the time of acquisition, being the date on which the property vested absolutely in the Crown.

(N.A. Peterkin)
JUSTICE OF APPEAL

Order of Court: The appellants to have one-third of their taxed costs both here and in the Court below.

Maurice Davis
CHIEF JUSTICE

I agree

(E.L. St. Bernard)
JUSTICE OF APPEAL

I agree

(N.A. Berridge)
JUSTICE OF APPEAL (ACTING)