

**SAINT CHRISTOPHER and NEVIS**

IN THE COURT OF APPEAL

Civil Appeal No.8 of 1999

BETWEEN:

**WILLIAM A. PINNEY**

Appellant

and

1. **MALCOLM GUSHARD** (Member of Nevis Island Administration responsible for lands)
2. **NEVIS ISLAND ADMINISTRATION**
3. **THE ATTORNEY-GENERAL of Saint Christopher and Nevis**

Respondents

Before:

The Hon. Mr. Satrohan Singh	-	Justice of Appeal
The Hon. Mr. Albert Redhead	-	Justice of Appeal
The Hon. Mr. Albert N.J. Matthew	-	Justice of Appeal (Ag.)

Appearances:

Dr. H. Browne and Mr. G. Hamilton for the Appellant  
Mr. K. Hudson Phillips Q.C.; Mr. T. Byron and Mr. M. Anderson  
for Respondents No.1 and No.2  
The Attorney-General, Hon. D. Bart, in person and Ms. S. Brisbane  
for Respondent No.3.

-----  
1999: September 28;  
October 25.  
-----

**MATTHEW, J.A. (Ag.)**

This appeal arises from the judgment of *Georges J* delivered on March 8, 1999 whereby he held *that the Nevis Land Acquisition Ordinance, No.2 of 1997, was constitutional and did not in any way contravene section 8 of the Constitution of Saint Christopher and Nevis which came into force on September 19, 1983.*

The background to this matter is that there appeared a notice dated June 26, 1998 and published in the *Observer Newspaper* and

the *Leeward Times Newspaper* of July 10, 1998, made pursuant to section 3 of the Nevis Island Land Acquisition Ordinance and called the *Montravers Estate Declaration*.

The Declaration was one of several declarations made on the said June 26, 1998 in respect of a larger area popularly referred to as the *Pinney's Estate* of which *Montravers Estate* forms part and comprises 14 acres of land.

By virtue of the Declaration which was purported to have been made in accordance with section 3 of the Ordinance, the Administration gave notice that the parcel of land commonly called *Montravers Estate* of which the Appellant was and is still the registered proprietor, was likely to be required for a public purpose, namely, the provision of amenities for tourists, the provision of parks and other places for public recreation, roads and highways and the preservation of archaeological and historical sites.

On July 16, 1998 the Appellant filed a notice of motion presumably under section 18 of the Constitution alleging that his rights and interests in and over his property were infringed contrary to section 8 of the Constitution and seeking various declarations and orders.

After a three-day hearing judgment was reserved and delivered as indicated above. The learned Trial Judge held as follows:-

**“In the result I declare that in principle as well as on authority that the Nevis Land Acquisition Ordinance 1997 does not in any way contravene section 8 of the Constitution and is therefore not unconstitutional. And I further declare that the Nevis Island Administration is competent to acquire Montravers Estate for the purposes declared in the Notice dated 26<sup>th</sup> June, 1998 and that the declared purposes of the acquisition are public purposes within the meaning of section 2 of the Ordinance.**

**I further declare that the Applicant is not entitled to any of the reliefs prayed for in his motion dated and filed 16<sup>th</sup> July 1998 and that the said motion be dismissed.**

**And it is ordered that the injunction granted to the Applicant on 16<sup>th</sup> July 1998 as varied by Order dated 14<sup>th</sup> August 1998 be discharged forthwith.**

**Costs to the First and Second Respondents to be paid by the Applicant certified fit for Counsel.”**

On or about March 18, 1999 the Appellant filed the following eleven grounds of appeal:

1. “The Learned Trial Judge erred in law in arriving at the conclusion that the motion is itself manifestly flawed after Senior Counsel for the First and Second Respondents had informed the Court that he did not intend to raise any issue on the form of action issued in this cause and consequently Counsel for the Appellant did not elaborately address the issue.
2. The Learned Trial Judge erred in law in holding that insofar as the Declaration ‘does not adhere to a strict and rigid compliance with the Ordinance (i.e. The Nevis Land Acquisition Ordinance No.2 of 1997) ‘both procedurally and substantively, that is in form and substance’ the Notice was nevertheless valid and effective.
3. The Learned Trial Judge erred in law in failing to appreciate that the Nevis Land Acquisition Ordinance No.2 of 1997 was a post-Constitutional law and is thus amenable to the test of constitutionality.
4. The Learned Trial Judge erred in law in failing to appreciate that the Land Acquisition Act Cap.273 is an ‘existing law’ that is, a pre-constitutional law which is deemed to have been passed by the Nevis Island Assembly but cannot be so deemed in relation to the Nevis Island Assembly.
5. The Learned Trial Judge erred in law in failing to appreciate that an unregulated and unfettered delegation by the Nevis Island Assembly to the Executive to acquire lands compulsorily offends the separation of powers doctrine implicit in the Constitution of St.Kitts and Nevis 1983 and as such is and in other respects unconstitutional.
6. The Learned Trial Judge erred in law in holding that the Nevis Land Acquisition Ordinance No.2 of 1997 did not offend section 8 of the Constitution of St.Kitts and Nevis 1983.
7. The Learned Trial Judge misconceived the effect of the Consent Order of 14<sup>th</sup> August 1998 between the parties and failed to appreciate that the Consent Order did not and could not inoculate the Nevis Land Acquisition Ordinance, No.2 of 1997 from the need to observe the requirements of section 8 of the St.Kitts and Nevis Constitution 1983.
8. The Learned Trial Judge erred in law in treating the Nevis Land Acquisition Ordinance No.2 of 1997 as a law in existence immediately before 26<sup>th</sup> February 1967 and as such its constitutionality could not be scrutinized as such scrutiny was being forbidden by paragraph 10 of Schedule 2 to the Constitution Order of St.Kitts and Nevis 1983.
9. The Learned Trial Judge erred in law in holding that the Land Acquisition Act (Cap 273) insofar as it applies to Nevis was deemed by the Constitution to have been passed by the Nevis Legislature, when in fact no legislature existed in Nevis at the date of the original passage of the said Act.
10. The Learned Trial Judge erred in law in failing to hold that the compulsory acquisition of the Appellant’s lands for the purpose of making them available to private developers for private gain is a colourable device which offends the public purpose requirement contemplated in the Constitution.
11. The Learned Trial Judge erred in law in failing to appreciate that the Nevis Island Assembly did not have the competence to repeal and replace the Land Acquisition Act (Cap 273) as it relates to the Island of Nevis.”

Before this Court learned Counsel for the Appellant said he would deal with his grounds of appeal in the following order: Firstly, he would deal with grounds 3, 4 and 5 together; then grounds 9 and 11; and lastly, grounds 2,6 and 10. It seems that Counsel was abandoning grounds 1, 7 and 8 which were not crucial in any event. This judgment is not going to turn on the form of the originating action which is the issue in ground 1. Ground 7 deals with the Consent Order of 14<sup>th</sup> August 1998 which permitted the servants or agents of the Respondents to enter the land of the Appellant for the purposes of section 4 of the Ordinance. Nothing turns on the Consent Order. Ground 8 which speaks of the status of Ordinance 2 of 1997 is repetitious and amply covered under other grounds of appeal, for example, grounds 3 and/or 6.

Even before making reference to his grounds of appeal and the manner in which he was going to treat them, learned Counsel for the Appellant submitted, and I shall attempt to use his exact words, *that the real issue in this appeal is the initial determination as to whether Ordinance No.2 of 1997 is not open to constitutional scrutiny because it has been inoculated by paragraph 10 of Schedule 2 to the 1983 Constitution Order.*

Learned Counsel stated that the Respondents were asserting that the Ordinance merely alters Act No.273 of the Federal Law and given that fact it has been preserved by paragraph 10. Indeed, that was one of the main submissions of learned Senior Counsel for the Respondent before this Court.

I think I should accept the hint from learned Counsel for the Appellant and go straight ahead into considering the real issue.

## **Status of Ordinance No.2 of 1997**

Section 3 of the Saint Christopher and Nevis Constitution Order 1983 states that the Constitution came into force on September 19, 1983 subject to the transitional provisions set out in Schedule 2 to the Order.

Paragraph 2 of Schedule 2 to the Order deals with existing laws.

Paragraph 2(2) is as follows:

“ Any existing law enacted by any legislature with power to make laws at any time before 19<sup>th</sup> September 1983 shall have effect as from that date as if it were a law enacted by Parliament:

Provided that any such law, to the extent that it relates to a specified matter, shall have effect on the island of Nevis as from that date as if it were a law enacted by the Nevis Island Legislature.”

The effect of this provision is that Cap 273 would be an existing law and it would be deemed to be passed by Parliament. If, as I shall demonstrate below, that it covers a specified matter, then it will also have effect in Nevis by virtue of the proviso.

But what is the meaning of the phrase “*specified matter*” in the proviso? For this, one turns to the interpretation section of the Constitution, section 119, where on page 85 “*specified matter*” means, in relation to the Government of the Island of Nevis, a matter specified in Schedule 5 to the Constitution.

Schedule 5 to the Constitution is found at page 93. There it is headed “*Legislative Powers*” and Part 1 of the Schedule gives a list of matters with respect to which the Nevis Island Legislature has exclusive power to make laws. One such matter at item 15 is “*Land and buildings* other than land and buildings vested in the Crown and specifically appropriated to the use of the Government, including holding of land by persons who are not citizens.”

Item 23 is the last item in Part 1 and it is “*Any matter that is incidental or supplementary to any matter referred to in this list.*”

There is one other part to Schedule 5. It is Part 2 and it is headed “*Interpretation*” It begins “*In this schedule references to incidental and supplementary matters include, without prejudice to their generality –*

(a).....

(b).....

(c) *the compulsory acquisition and tenure of land”. etc.*

Based on the above, I am of the view that acquisition of land in Nevis is a specified matter so that on September 19, 1983, Cap 273 applied to Nevis and the Nevis Legislature was both competent to pass Ordinance 2 of 1997 and to repeal Cap 273 as it did by section 33 of the Ordinance.

Another provision of the Constitution fortifies the view expressed above. Section 106 sets out the responsibilities of the Nevis Administration. Sub-section (3) of section 106 states:

“If land in the island of Nevis is required for the use of the Government, the Administration shall either make available suitable land that is vested in the Crown or else acquire and make available other suitable land and the Government shall be responsible for paying appropriate compensation to any private person whose interests may have been adversely affected and appropriate compensation to the Administration for any buildings or other property previously paid for by the Administration and appropriated for the use of the Government with the land.”

This provision emphasizes the dominant authority of the Nevis Island Administration in the acquisition of land in Nevis.

Ordinance No.2 of 1997 has to be measured against paragraph 10 of Schedule 2. Paragraph 10 uses the phrase “alters a law”. The definition section of the Constitution, section 119 at sub-section (14) states:

“In this Constitution references to altering this Constitution or any other law, or any provision thereof, include references –

- (a) to revoking it with or without re-enactment thereof or the making of different provisions in lieu thereof;
- (b) to modifying it whether by omitting or amending any of its provisions or inserting additional provisions in it or otherwise; and
- (c) to suspending its operation for any period or terminating any such suspension.”

I think I should set out the provisions of paragraph 10 of Schedule 2 to the Order. Sub-paragraph (1) is as follows:

“Nothing in section 8 of the Constitution (which deals with protection from deprivation of property) shall affect the operation of any law that was in force immediately before 27<sup>th</sup> February 1967 or any law made on or after that date that alters a law that was in force immediately before that date and does not –

- (a) add to the kinds of property that may be taken possession of or the rights over and interests in property that may be acquired;
- (b) make the conditions governing entitlement to compensation or the amount thereof less favourable to any person owning or having an interest in the property; or
- (c) deprive any person of such right as is mentioned in sub-section (2) of that section.”

A physical comparison of the original Chapter 273 and Ordinance 2 of 1997 will reveal a very close similarity of the provisions and I have no difficulty in coming to the conclusion that Ordinance 2 of 1997 alters Cap 273 in accordance with subsection (14) of section 119 of the Constitution.

**In *Windward Properties Ltd v Government of St.Vincent and the Grenadines* 1996, 1 WLR 279** at page 283, *Sir Michael Hardie Boys* in delivering the advice of the Board and speaking of a paragraph similar to paragraph 10 said:

“In their Lordships’ view the two categories of law which are excluded by this paragraph from the effect of section 6 of the Constitution are first, any law in force immediately before 27 October, 1969 (when the Constitution became operative), and secondly, any subsequent amendment that does not do any of the things described in sub-paragraphs (a), (b) and (c). The Land Acquisition Act is within the first category and consequently is not affected by section 6 of the Constitution.”

In this case, Ordinance 2 of 1997 is in the second category but it is almost identical to the original Cap 273 that it can in no way do any of

the things proscribed by paragraph 10 in sub-paragraphs (a), (b) and (c).

The learned Attorney-General informed the Court that Cap 273 had been amended by **Act 10 of 1969** and the learned Trial Judge had found that the amendment introduced a concept for agricultural purposes which put an onus on the landowner to prove that at the material time the land was being used for another purpose. The Judge held that the amendment in effect introduced a disadvantage in terms of Cap 273.

The learned Attorney-General raised the question whether paragraph 10 protects the amendment?

Learned Counsel for the Appellant said he agreed with the Attorney-General and with the learned Judge.

I should mention that this is not one of the many grounds of appeal raised by the Appellant and the finding of the learned Judge is that he entertained no doubt that section 19(1)(a) of the Ordinance reverted to the original Cap 273 without the amendment and it did away with the requirement of the landowner having to prove that the land was not being used for agricultural purposes. So the disadvantage of which the Judge spoke earlier is not to be found in the Ordinance and it is the Ordinance that has to be measured against paragraph 10 of Schedule 2 to the Order.

I agree with the learned Trial Judge that Ordinance 2 of 1997 is not unconstitutional. I also hold that the said Ordinance is not open to constitutional challenge.

That should be the end of the matter. But learned Counsel for the Appellant has raised several substantive matters in his grounds of

appeal and some response ought to be given to them. I shall proceed in the way indicated by him.

**Grounds 3, 4 and 5:**

**Ground 3** relates to the status of Ordinance 2 of 1997 and has been adequately dealt with above.

**Ground 4** in effect states that Cap 273 cannot be deemed to have been passed by the Nevis Island Assembly. Above, I showed how Cap 273 by the effect of the proviso in sub-paragraph (2) of paragraph 2 of Schedule 2 to the Order makes that possible.

**Ground 5** alleges that the separation of powers doctrine implicit in the Constitution was offended. Reliance was placed on Civil Appeal No.8 of 1994, **J. Astaphan & Co. [1970] Ltd v Attorney-General of the Commonwealth of Dominica**.

It seems to me that the separation of powers doctrine is being over-worked in recent times. The constitutional challenge or problem that arises in these cases can be regarded as a structural one, not necessarily based on any fundamental rights section or any other provision of the Constitution. As learned Counsel says it is a doctrine which is implicit in the Constitution.

*David Foulkes* in his “**Introduction to Administrative Law**”

writing on separation of powers stated: -

“The doctrine of separation of powers, which we have already referred to, is particularly associated with the name of Montesquieu who in 1748 published his *De l’Esprit des Lois* (“The Spirit of the Laws”). In every Government there are, he said, three sorts of power, the legislative, the executive and the judicial.

When the legislative and the executive powers are united in the same person, or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again, there is no liberty if the judicial power be not separated from the legislative and executive.....

There would be an end of everything, were the same man or body, whether of the nobles or of the people to exercise those three powers, that

of enacting laws, that of executing the public resolutions and of trying the causes of individuals”.

In **Gilbert Ahnee v D.P.P. Mauritius**, Privy Council Appeal No.28 of 1998, the Board found that the Supreme Court of Mauritius had the inherent authority to impose fines for contempt even though the power to do so was not specifically spelt out. The Privy Council found the Court to have that power because of the structure of the Constitution and the doctrine of separation of powers. In that context the Board said:-

“First, Mauritius is a democratic State constitutionally based on the rule of law. Secondly, subject to its specific provisions, the Constitution entrenches the principle of the separation of powers between the legislative, the executive and the judiciary.

Under the Constitution one branch of government may not trespass upon the province of any other.

Thirdly, the Constitution gave to each arm of government such powers as were deemed to be necessary in order to discharge the functions of a legislature, an executive and a judiciary.”

Learned Counsel for the Appellant complains of an unregulated and unfettered delegation by the Nevis Island Assembly to the Executive to acquire lands. It seems to me that section 8 of the Constitution envisages executive action. Who else can compulsorily take possession or compulsorily acquire and leaving himself or herself open to constitutional scrutiny? The safeguards are that the Executive must act in accordance with law. The acquisition must be for a public purpose. The law must prescribe principles on which compensation is to be determined and the manner in which compensation is given. If the Executive does not comply with the law the acquisition will be held to be bad by the Judiciary. There is no issue here of one branch of Government trespassing upon the province of another. This ground of appeal is misconceived.

Grounds 3, 4 and 5 fail.

### **Grounds 9 and 11**

**Ground 9** seems to be an attack on the interpretation given by the Constitution. The Appellant is saying since at the time when Cap 273 was originally passed in 1958, no legislature existed in Nevis, the learned Trial Judge erred in law in holding that the Land Acquisition Act, Cap 273 insofar as it applies to Nevis was deemed by the Constitution to have been passed by the Nevis Legislature.

The learned Trial Judge was giving effect to the Transitional Provisions to which the Constitution is subject. See section 3 of the Constitution Order. I have already set down the provisions of paragraph 2(2) of Schedule 2 to the Constitution Order above.

This ground of appeal fails.

**Ground 11** raises the competence of the Nevis Island Assembly to repeal and replace the Land Acquisition Act Cap 273.

This matter has been dealt with above.

This ground of appeal also fails.

### **Grounds 2, 6 and 10**

**Ground 2** deals with the compliance of the declaration to the legislation. There are two kinds of procedures that are normally taken in the process of acquisition of land. In one case when a Government has made up its mind to acquire a piece of land, it proceeds under a section similar to section 3 of Ordinance 2 of 1997 and after two publications of the declaration the land vests in the Crown.

In the other case the Government has not yet made up its mind. It wants to be able to examine the land so it acts under a section similar to section 4 where the land is likely to be required for a public

purpose, and then it obtains permission to enter on the land and survey and take levels, etc. Presumably if satisfied with the various experiments it would then act under section 3.

In this particular case the Declaration which was published on June 26, 1998 was made pursuant to section 3 of the Nevis Land Acquisition Ordinance but in the body it was notified that the land was “likely to be required for a public purpose”, words applicable to section 4.

Perhaps matters will become clearer if I set down the sections of the Nevis Land Acquisition Ordinance, No.2 of 1997. They are as follows:-

Acquisition of land. 3.(1) If the Governor-General, acting in accordance with the advice of the Cabinet considers that any land should be acquired for a public purpose he may cause a declaration to that effect to be made and published by the Secretary to the Cabinet in the manner provided by this section.

(2) Every declaration shall be published in two editions of a newspaper of general circulation in Nevis and a copy of every such declaration shall be posted on one of the buildings (if any) on the land to be acquired or exhibited at suitable places in the locality in which such land is situate, and in the declaration shall be specified the following particulars relating to the land which is to be acquired –

- (a) the parish or district in which the land is situate;
- (b) a description of the land giving the approximate area and such other particulars as are necessary to identify the land;
- (c) in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;
- (d) the public purpose for which the land is required.

(3) Upon the second publication of the declaration in a newspaper as aforesaid the land shall vest absolutely in the Crown, and the authorized officer and his agents, assistants and workmen may enter and take possession of the land accordingly.

(4) Nothing in this section shall be deemed to prevent the acquisition of lands for public purposes by private treaty.

Preliminary notification and power to enter land. 4. If it appears to the Governor-General acting in accordance with the advice of the Cabinet that any land is likely to be required for a public purpose and it is necessary to make a preliminary survey or other investigation of the land, he may cause a notification to that effect to be made by the Secretary to the Cabinet and published in a newspaper of general circulation in Nevis and at the same time in notices to be exhibited at suitable places in the

locality in which the land is situate, and thereupon it shall be lawful for the authorized officer and his agents, assistants, and workmen, to do all or any of the following things –

- (a) to enter upon and survey and take levels of any land in any locality to which the notification relates;
- (b) to dig or bore into the sub-soil of such land;
- (c) to do all other acts necessary to ascertain whether the land is adapted to such purpose;
- (d) to set out boundaries of the land intended to be taken, and the intended line of work, if any, proposed to be done thereon;
- (e) to mark levels and lines by placing marks and cutting trenches;
- (f) where otherwise the survey cannot be completed, the levels taken or the boundaries or lines of the work demarcated, to cut down and clear away any standing crop, fence, trees or bush;
- (g) to do all such other acts as may be incidental to or necessary for any of the purposes aforesaid:

Provided that the authorized officer shall not enter into any building, or into or upon any enclosed yard, court or garden attached to a dwelling house, except at reasonable hours, and except with the consent of the occupier thereof, without previously giving to such occupier at least seven days' notice in writing of his intention to do so;

Provided further that compensation shall be assessed and paid to the persons interested in the land so entered for any actual damage or injury resulting to them by reason of the exercise of the powers conferred by this section –

- (i) in so far as it relates to land the acquisition of which is subsequently deemed to be abandoned under section 9 or abandoned under section 10, as though it were compensation payable under this Ordinance for the acquisition of the land;
- (ii) in so far as it relates to land the compulsory acquisition of which is subsequently completed under section 3, as though it were part of the compensation for the acquisition of the land.”

As the learned Judge wrote -

“It is therefore pellucidly clear that the purported notice in the instant matter dated 26<sup>th</sup> June 1998 was intended to have been made under and in accordance with section 4 of the Ordinance and not under section 3 as stated and this is amply borne out by the text of the notice itself..... in which case, a preliminary notification is issued which empowers the authorised officer, his agents and assistants to merely enter the land and do certain specified acts in order to determine whether in fact a decision to acquire under section 3 should be taken.”

The ground of appeal in part says the Declaration is bad because it refers to section 3 instead of section 4. The law cannot tolerate such fanciful objections which are adequately answered by

the latin maxims *FALSA DEMONSTRATIO NON NOCET* and *UT RES MAGIS VALEAT QUAM PEREAT*.

The other objection taken to the Declaration was that it was signed by Oban Lawrence, Secretary to the Cabinet, when at all material times the Secretary to the Cabinet of the Federation presumably was Joseph Edmeade.

First of all, the notice states that Oban Lawrence signed as Secretary to the Cabinet, Nevis Island Administration. The Constitution of St. Christopher and Nevis recognizes this division of functions between the two States of the Federation. It is a document peculiar to them. While it is true that there are provisions of the Constitution recognizing the Secretary to the Cabinet, for example, section 62, section 104(4) of the Constitution states that certain sections of the Constitution have to be modified when they apply to the Nevis Island Administration.

This ground of appeal likewise fails.

**Ground 6** raises the constitutional validity of Ordinance 2 of 1997 and I have already dealt with this. This ground of appeal also fails.

This brings me to deal finally with **Ground 10**, the public purpose issue. "*Public purpose*" is defined by section 2 of the Nevis Land Acquisition Ordinance, 1997 to mean a purpose connected with or incidental to the specified matters in Schedule 5 of the Constitution of St. Christopher and Nevis and includes the purpose of fulfilling any obligation of the Nevis Island Administration and any purpose pertaining or ancillary thereto.

Learned Counsel for the Appellant submitted that the definition is vague, illusory and lends itself to caprice, arbitrariness, unreasonableness and covers any conceivable situation which touches even tangentially any of the subject matters listed in Parts 1 and 2 of Schedule 5 of the Constitution.

Counsel submitted further that the public purpose definition purports to enable the Nevis Island Legislature to transfer property from one private person to another without any public benefit or advantage accruing from such transfer.

Counsel stated that the public purpose requirement contemplates that the terms and means of enjoyment of the transferred property should be within the control of the State by the State itself or some third body under the overall control of the State.

Learned Senior Counsel for the Respondent observed that the definition of public purpose in the Ordinance is limited to its legislative competence and is not at large as is the case in Cap 273. The Respondents were content to rely on the detailed treatment of the meaning of "*public purpose*" by the learned Judge, which they submitted was correct.

In **Charles Mills v Attorney-General of St. Christopher and Nevis** 1993 45 WIR 125, on the issue of public purpose, Counsel for the Appellants had submitted to the Court of Appeal that the trial Judge had not gone into the facts of the case or made a determination of the allegation that the land had not been acquired for a public purpose. He urged the Court to read the affidavits and, if they found that bad faith had been alleged and proved, the Appellants

would have been entitled to a determination and a remedy on that ground. The Court obliged but the Appellants still failed.

From the record I see that the Judge in this case did consider the affidavits and in the judgment reference was made to portions of the affidavit of the First Respondent.

The Notice dated June 26, 1998 gave the public purposes as being –

“the provision of amenities for tourists, the provision of parks and other places for public recreation, roads and highways and the preservation of archaeological and historical sites.”

The learned Judge made a finding of fact that the declared purposes of the acquisition are public purposes within the meaning of section 2 of the Ordinance. I agree. This ground of appeal also fails.

It follows that I cannot agree with the submission that section 8 of the Constitution contemplates that what constitutes a public purpose is largely a question for the Legislature, not exclusively for the Executive.

The appeal stands dismissed with costs to the First and Second Respondents to be paid by the Appellant to be taxed if not agreed.

A.N.J. MATTHEW  
Justice of Appeal (Ag.)

I concur.

SATROHAN SINGH  
Justice of Appeal

I concur.

ALBERT REDHEAD  
Justice of Appeal