

THE EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
ANTIGUA AND BARBUDA

CLAIM NO: ANUHCV2012/0727

IN THE MATTER OF THE LAND ACQUISITION ACT CAP 233
OF THE REVISED LAWS OF ANTIGUA AND BARBUDA

BETWEEN:

HMB HOLDINGS LIMITED

Claimant

AND

HAROLD LOVELL
In his capacity as Minister of Finance

Defendant

Appearances:

Mr. John Carrington with Stacy Richards Anjo for the Claimant
Mr. Justin Simon QC for the Defendant.

2013: March 4
March 8

RULING

- [1] **Remy J.:** The Applicant, HMB Holdings Limited (HMB) is a company incorporated under the Laws of Antigua and Barbuda. The Respondent is an elected Member of Parliament and the Minister of Finance and the Economy in Antigua and Barbuda.
- [2] On the 7th November 2012, HMB applied to the Court for leave to apply for an Order of Mandamus as follows: -

- 1) To compel the Respondent, Harold Lovell in his capacity as Minister of Finance and the person required under the Land Acquisition Act Cap 233 (the "Act") to comply with his statutory duty under the Act, section 29 to issue a warrant for the payment of compensation, interest and costs awarded to the Applicant by the Board of Assessment constituted under the Act which compensation award was increased by the Court of Appeal along with further costs assessed by the High Court in relation to the compulsory acquisition of lands registered as Registration Section: St. Phillip's South; Block: 32 3282 A; Parcels 55,56 and 57 (the "said acquisition"), the Applicant being the registered proprietor at the time of acquisition.

[3] The Grounds of the application were stated as follows:-

1. The Respondent is under a statutory duty by virtue of the Act, Section 29 to issue a warrant for payment of compensation, interest and costs by the authorized officer to the Applicant upon an award following a compulsory acquisition of property under the Act.
2. Compensation for the acquisition was awarded by the Board of Assessment on the 5th January, 2010 in the sum of US\$23,820,999.00 with interest of 10.25% and costs of US\$42,090.00 which compensation award was increased subsequently on the 5th December, 2011 by the Court of Appeal to US\$45,499,102.09. Further costs were assessed on the 1st June, 2012 by the Court in the amount of US\$104,285.82. Costs awarded continue to attract the statutory rate of interest.
3. No warrant has been issued by the Respondent despite written requests by the Applicant on the 3rd June, 2010 and the 28th September, 2012.
4. The Respondent has therefore failed to comply with his statutory duty under Section 29 of the Act.

[4] The Affidavit in Support of the Application deposed to by Mrs. Querard, Managing Director of HMB and filed on the 7th November 2012, as well as the Supplementary Affidavit filed on the 28th

November 2012, set out the facts giving rise to this application. The facts contained therein are as follows:-

- a. The Claimant is the former registered proprietor of Parcels 55, 56 and 57 Block 32 3282A St Phillip's South Registration Section which comprise 108 acres along the Half Moon Bay (the "Property").
- b. The Government of Antigua and Barbuda had itself registered as a proprietor of the Property in 2005 and completed the acquisition thereof pursuant to the provisions of the Land Acquisition Act in July 2007 when they took possession thereof.
- c. On January 5, 2010, the Board of Assessment, Harris J (Chairman) and Victor Michael and Joyce Kentish (Members) delivered its Award, the material terms of which were that the Claimant was awarded compensation in the sum of US\$23,820,999.00 with interest thereon at the rate of 10.25% per annum from July 2007, and costs of US\$42,090.00. Subsequently, on the 5th December 2011, the compensation award was increased to US\$45,499,102.09 by the Court of Appeal.
- d. Further costs were assessed in the sum of US\$104,285.82 by the High Court on the 1st day of June, 2012.
- e. On the 23rd day of December, 2011, the Attorney-General as the representative of the Government of Antigua and Barbuda made application to the Court of Appeal for conditional leave to appeal to Her Majesty in Council against the judgment of the Court of Appeal dated the 5th December, 2011 and for a stay of execution of the said judgment. The Attorney-General was given conditional leave to appeal by order dated the 21st March, 2012. However the Court of Appeal did not grant that part of the application which requested a stay of execution of the judgment of the 5th December, 2011.
- f. As at the 7th day of November, 2012, as a consequence of the judgment of the Court of Appeal, the sum of \$70,447,402.93 is due the Applicant as compensation,

interest and costs for the compulsory acquisition of the Property under the Act and interest continues to accrue on the said compensation and costs.

- g. The Claimant's attorneys wrote to the Defendant on 3rd June 2010 requesting him to issue the warrant for payment from the Treasury pursuant to the Land Acquisition Act Cap 233 section 29 of the compensation, interests and costs due to the Claimant under the Award by the Board of Assessment. The only response was a request for additional time in which to respond to the letter.
- h. On 28th September 2012, the Claimant's attorneys wrote to the Defendant again requesting issuance of the warrant. The Defendant did not reply to this letter.
- i. The Claimant has not been paid compensation for the acquisition of the Property.
- j. The Defendant has not issued the warrant as requested by the Claimant for payment from the Treasury of the compensation due to the Claimant.

[5] By Order of the Court dated 29th November 2012, leave was granted to HMB to bring an application for Judicial Review. Pursuant to the said Order, the Claimant filed a Fixed Date Claim on the 13th December 2012, seeking the following relief:-

1. Declarations as follows:-
 - a) That the Defendant is under a public duty to issue a Warrant for payment from the Treasury of the sums awarded to the Claimant as compensation, interest and costs under the provisions of the Land Acquisition Act Cap 233 for the acquisition of its property;
 - b) That the Defendant has wrongfully failed to carry out the said duty to issue the said Warrant.
2. An order for Mandamus requiring the Defendant to comply with his public duty under the Land Acquisition Act Cap 233 Section 29 to issue a warrant for the payment from the Treasury of the compensation, interest and costs payable to the Claimant in relation to the

compulsory acquisition of Parcels 55, 56 and 57 Block 32 3282 A St. Phillip's South Registration Section by the Government of Antigua and Barbuda.

3. Damages
4. Costs
5. Such further or other relief as the Court deems just.

[6] An Affidavit in Support of Judicial Review, sworn to by Mrs. Querard, Managing Director of HMB was filed on the 13th December, 2012.

[7] At the First Hearing of the matter on the 17th December 2012, the Court made an Order inter alia, that (a) the Defendant file and serve his Affidavit in Response on or before the 18th January, 2013, (b) that Counsel for the parties file Statements of Fact, Issues and Law on or before the 31st day of January 2013. The hearing of the matter was then adjourned to the 4th February 2013.

[8] On the 31st day of January 2013, Learned Counsel for the Claimant filed their Statement of Facts, Issues and Law. They contend that several of the matters, of which evidence is given in the Affidavit of Mrs. Querard, are not in dispute. Some of the facts are that (a) The Claimant's appeal from the Award of the Board was allowed in December 2011 and the Court of Appeal increased the quantum of compensation payable to the Claimant to US\$45,499,102.09. (b) The Government of Antigua and Barbuda has obtained final leave to appeal the increase in the Award ordered by the Court of Appeal to Her Majesty in Council. However, the Court of Appeal refused to grant a stay of execution of its Order. (c) As at December 13, 2012 the sum of US\$70,908,444.49 was due to the Claimant with interest accruing thereon at the daily rate of US\$12,806.71. Counsel further state that, additionally, the Claimant has disclosed further documents to the Defendant without receiving a response thereto. According to Learned Counsel, these documents reveal the following:-

- a. Since 2008, the Defendant indicated that the Government of Antigua and Barbuda will not go to the Treasury with respect to the payment of compensation. The government's intention is only to have payment effected from monies received from third party developers.

- b. This position was repeated by the Honourable Attorney General to the press in May 2011.
- c. The Government of Antigua and Barbuda accepted the quantum of compensation awarded by the Board of Assessment.
- d. No provision was made in the 2013 budget estimates for recurrent and development expenditure for the payment of compensation to the Claimant.
- e. It has already been conceded by the Hon Attorney General that the Court has the power to make an Order for Mandamus against the Defendant.

[9] The submissions of Learned Counsel on the law are as follows:-

1. The Land Acquisition Act Cap 233 section 29 provides as follows: - "All amounts which have been awarded by way of compensation under this Act, including interest and costs to be paid by the authorized officer, and all costs, charges and expenses which shall be incurred under the authority of this Act, shall be paid out of the Treasury on the warrant of the Minister of Finance."
2. The Antigua and Barbuda Constitution section 9 states "No property of any description shall be compulsory taken possession of, and no interest in or right to or over property of any description shall be compulsory acquired, except for public use and except in accordance with the provisions of a law applicable to that taking of possession or acquisition and for the payment of fair compensation within a reasonable time".
3. In discussing the historical development of this remedy, the learned authors of deSmith, Woolf and Jowell *Judicial Review of Administrative Action* 5th ed. page 632 quote Blackstone's Commentaries that mandamus was issued for an infinite variety of purposes (including) "to compel local officials to pay over sums due and to perform a variety of other public duties".

4. In *Camacho v. Collector of Customs* 18 WIR 159, 167 Lewis CJ stated “the decision of the Controller ...amounted to a failure to exercise his discretion and a breach of duty, and the appropriate order for the court to make, whether under section 15 of the constitution or in the exercise of its general jurisdiction to review his decisions, is an order of mandamus requiring him to consider and determine the applications according to law”.
5. The learned authors of *Wade and Forsythe Administrative Law* 9th ed. state at page 620: “Obligatory duties must be distinguished from discretionary powers. With the latter mandamus has nothing to do ... Statutory duties are by no means always imposed by mandatory language with words such as “shall” or “must”. Sometimes they will be implied counterparts of rights, as where a person “may appeal” to a tribunal and the tribunal has a correlative duty to hear and determine the appeal. Sometimes also language which is apparently merely permissive is construed as imposing a duty as where “may” is interpreted to mean “shall”. Even though no compulsory words are used, the scheme of the Act may imply a duty.”
6. In *Gairy v. Att Gen of Grenada - Civ App 7 of 1999* at para. 17, - Byron CJ agreed with the statements from *R v. Commrs for Special Purposes* 21 QB 313, 322 that “there can be no objection to the grant of relief by way of mandamus directed to a statutory officer requiring that officer to pay money if there be a public legal duty to so act” and that “mandamus will issue not only to compel exercise of the discretion according to law but also to compel it to be exercised in the way in which it must be exercised.”
7. In *Gairy's* case at paragraph 27, the Court concluded that the Grenadian equivalent of the Land Acquisition Act section 29 created “a specific duty imposed by statute on a particular minister in his official capacity for the benefit of the public. In my view, this is a public duty enforceable by an order of mandamus”.
8. In *Gairy's* case at paragraphs 30 and 32, the Court drew the distinction between a claim for monies payable under the Land Acquisition Act and one that arises as a result of a

judgment in civil proceedings which is enforceable under the Civil Proceedings Act and concluded that in the latter case the public duty lies on a public servant, namely the Permanent Secretary, rather than the Minister and that "The Minister cannot be made accountable for the statutory duty of the Permanent Secretary". The implication is that the converse must also be true that the Permanent Secretary cannot be liable for the duties of the Minister and therefore there is no alternative form of redress for the duty under the Land Acquisition Act which is a duty of the Minister himself.

9. The court has a discretion to grant judicial review, whether in the form of mandamus or declaration, upon being satisfied of the failure of a public authority to comply with its duty: see *Chief Constable of North Wales Police v. Evans* [1982] 3 AER 141, 155j and 156d. However, the Court will usually exercise its discretion in favour of the grant of the remedy where the failure or refusal to perform the public duty is established and there is no other means open to the Claimant to enforce its performance: see *R v Bishop of Sarum* [1916] 1 KB 466,470.

[10] The Court notes that no Submissions were filed by Counsel for the Defendant. However, on the 18th day of February 2013, the Defendant Harold Lovell filed an Affidavit in Response (in response to the affidavit of Mrs. Querard filed on the 13th December 2012) in which he deposed, inter alia:- Since March 2009, he has been assigned the portfolio of Minister of Finance, the Economy and Public Administration. He states that the Government compulsorily acquired the lands on March 14, 2002 with the publication of the Parliamentary Resolutions in the Gazette. The Claimant challenged the acquisition which legal action was finally resolved with a decision of the Privy Council in favour of the Government in June 2007, with costs awarded against the Claimant both at the Court of Appeal and the Privy Council. In March 2005, the Government had itself registered as proprietor. The Claimant obtained an Order in 2008 for the appointment of the Board of Assessment; the Board awarded compensation to the Claimant. Subsequently the compensation award was increased by the Court of Appeal. The Government of Antigua and Barbuda applied to the Court of Appeal for leave to her Majesty in Council against the judgment of the Court of Appeal and for a stay of execution of the said judgment. The Court of Appeal granted conditional leave to appeal, but refused to grant a stay of execution of the judgment. Final leave to appeal was granted

to the Defendant on 29th October 2012. The Government's appeal is limited to the additional compensation amount awarded by the Court of Appeal and the rate of interest awarded by the Board of Assessment. Mr. Lovell further admits the existence of the provision of section 29 of the Land Acquisition Act, but states that the warrant has not been issued due to his actual knowledge of the impossibility of the Treasury to meet the compensation payment given the Government's current fiscal and financial challenges which continue. He also admits that the Claimant's Attorney wrote to him requesting the issuance of the warrant under Section 29 of the Land Acquisition Act.

[11] Mr. Lovell further deposed that by Fixed Date Claim Form filed on August 12, 2010 the Claimant claimed against the Government in the name of the Attorney General, inter alia, an Order compelling the Minister of Finance to procure payment of the compensation award forthwith to the Claimant, and damages for breach of the Claimant's constitutional rights. The case against the Government was dismissed with costs. Well before the award by the Board of Assessment, the Government had entered into agreement with an investor, following public invitations and due diligence, to develop the lands in consideration of a sum that would have satisfied the award which was generally in keeping with two independent valuations obtained by the Government, but the increase in the compensation awarded by the Court of Appeal has proved a challenge for the investor. The Government has itself been experiencing constraints given the state of the economy since 2009; there has been a contraction in the economy between 2009 and 2011 of approximately 22%, with negligible growth of approximately 1% in 2012 and a projected growth in 2013 of less than 2% according to forecasts made by the Eastern Caribbean Central Bank. In 2009, the Government suffered a more than 20% reduction in total revenues compared to 2008 and that revenues continue to be more than \$100 million below the amount collected in 2007 and 2008. As a result, between 2008 and 2011, total expenditure was reduced by 25%. This includes a 14% reduction in spending on wages and salaries, a 36% cut in spending on goods and services and an 80% reduction in capital expenditure. Whereas capital expenditure should average about 5% of the GDP, it averaged less than 2% over the past few years and emphasis has, as a result been on functional maintenance. The Government's fiscal challenges and debt arrears have necessitated its development and implementation of a Fiscal Consolidation Programme, which is being supported by the IMF through a Stand By Arrangement, to better align revenue with expenditure. Despite its efforts, the Government continues to face significant fiscal constraints that

make it difficult to cover its day-to-day obligations. For these reasons, the Government has been unable to meet its obligations to pay the compensation awarded by the Board of Assessment, despite its genuine desire so to do. Mr. Lovell states that the Government's failure to comply with its statutory duty has not been intentional, as alleged by the Claimant.

[12] On the 1st March 2013, by way of response to the Affidavit of Mr. Lovell, Counsel for the Claimant filed a Supplemental Pre-Trial Statement of Facts, Issues and Law, in which they submit inter alia, the following:-

- a. The significant paragraphs in the Defendant's affidavit are paragraphs 9 and 17. In these paragraphs, the Defendant admits (i) the statutory duty to issue the warrant under the Land Acquisition Act section 29; and (ii) that warrant has not been issued.
- b. In the constitutional proceedings by the Claimant sought against the Government of Antigua and Barbuda concerning the non payment of compensation that is referred to at paragraph 11 of the Defendant's affidavit, the Hon Attorney General conceded in his written submissions the entitlement of the Claimant to judicial review in the form of an Order for mandamus. The Defendant's evidence does not indicate any different circumstances from those that existed during those proceedings.
- c. The statutory obligation to pay compensation under the Land Acquisition Act section 29 is that of the Minister, and not a third party investor. In any event, title to the property has been vested in the Government since 2005 and it took possession in 2007. Nothing has prevented the Government from proceeding with the agreement with the investor and making at least partial satisfaction of the Award no later than January 2010 when the Award was made by the Board of Assessment.
- d. It is clear from the decision of Privy Council in *Gairy v. Att Gen of Grenada PC29/2000* esp. paragraphs 7 and 31 the fiscal difficulties of a government do not constitute justification for the refusal to grant an Order of mandamus. The proper course is to make the order for immediate payment with liberty to the Defendant to apply.

- e. The Defendant's evidence at paragraph 14 merely begs the question: where has the Government of Antigua and Barbuda placed the payment of compensation to the Claimant on the list of priorities for the limited capital expenditure available? This is more so in the light of the significant capital projects undertaken by the Government since the initial Award such as the commencement of the construction of a new airport since 2012, a public fact of which the court is entitled to take judicial notice.
- f. The overwhelming factor against the exercise of discretion in favour of the Defendant continues to be that notwithstanding that this property was acquired for a public purpose since 2002 (on the Defendant's evidence) it has not been used for any purpose since the Government formally took possession of it in 2007. What has occurred has been that the Claimant has been deprived of its property by a Government which has publicly disavowed its intention to provide compensation therefor in accordance with its statutory duty under the Land Acquisition Act. The Defendant's statements at paragraphs 16 and 17 of his affidavit that he has a genuine desire to pay and the non compliance was not intentional, which in any event are not relevant, therefore ring hollow.

[13] When the matter came up for hearing in open Court on Monday 4th March 2013, both Counsel were awarded an opportunity to make oral submissions. Learned Counsel John Carrington submitted as follows: - Section 29 of the Act is very clear; monies are to be paid out of the Treasury. The State is under an obligation to pay compensation. The only issue is the issue of the quantum of compensation in light of the fact that there is an appeal pending before the Privy Council. The issue before the Court is - should the warrant be issued? Learned Counsel noted that a stay was refused by the Court of Appeal and no application was made to the Privy Council by the Defendant with respect to the stay.

[14] Mr. Carrington contended that, with respect to the quantum, the over-arching consideration has to be that this Court cannot be seen to be interfering with a decision of the Court of Appeal; no matter how well meaning may be the intention of the High Court. He adds that what the Attorney General is asking, is that the Judge make an order that the warrant be issued for the amount that the Defendant is satisfied with, but co-incidentally has not paid since January 2010 when the Board of

Assessment made its award. If these proceedings had been brought immediately after 2010, there could possibly have been no answer to such a submission. Events have moved on since then and of course, what has happened is that the Court of Appeal has significantly increased the amount due by way of compensation, and has also refused a specific application by the Crown to stay execution of the additional amount awarded by the Court of Appeal. The position that this Court is in, is that it is bound by the decision of the Court of Appeal. Once it has been conceded that the Claimant is entitled to the relief sought, the only order that this Court can make, is for the issue of the warrant in the sum ordered by the Court of Appeal. The Court has no jurisdiction to grant what will in effect be a stay of the Court of Appeal's order after the Court of Appeal itself has refused to grant that stay.

[15] Learned Queen's Counsel Justin Simon in his reply stated that he did not agree that the application being made by the Defendant constitutes either an appeal of the Court of Appeal's refusal of stay, or that it is in variance with the Court of Appeal's order. He referred to Section 29 of the Act. He said that there is no doubt that an award has been made by the Tribunal; that award was increased by the Court of Appeal. The fact that the increase is the subject of an appeal, to his mind, indicates that there is not a settlement in respect of the amount awarded by way of compensation. He states that what he means by "settlement", is a figure that can be stated to be irrevocable. He adds that it may well be that, if the Defendant is successful in respect of the appeal, but by virtue of the Warrant issued by this Honourable Court, the entire amount would have been paid by then and clearly it would create an issue. Mr. Simon submits that it is for that reason, that the fact of the appeal to the Privy Council clearly indicates that the award of compensation is not final except to the extent of the award by the Assessment Board which is not the subject of the appeal.

[16] With the leave of the Court and with no objection from Mr. Simon, Mr. Carrington responded to the arguments of Mr. Simon. Learned Counsel Mr. Carrington stated that the general rule of law is that an appeal does not operate as a stay. He referred to the Act and stated that Section 17 (3) of the Act speaks of appeals from the Board to the Court of Appeal. He states that the decision of the Court of Appeal, is the amount awarded by way of compensation under this Act. He made reference to the opening words of Section 29 namely "All amounts which have been awarded by

way of compensation under this Act...” He states that this would include an amount awarded by the Court of Appeal. He states that if the Crown is successful in its appeal, it is in no different position from any other litigant and if there is a risk that a successful appellant would not be able to recover any excess that had been paid before the appeal was determined, the proper course is to have such risk assessed on an application for a stay. That, he says, had already been done, and the Court of Appeal has already concluded that no risk exists in this case and has refused a stay. Accordingly, argues Counsel, this cannot be re-opened before this Court. I agree with the submission of Mr. Carrington that I cannot re-visit or address the issue of the stay. I am of the further view that, in the absence of a stay, the increased amount awarded by the Court of Appeal namely the sum of US \$45,499,102.09, plus interest, is the quantum of compensation payable.

ISSUES

[17] Two issues arise for determination by the Court:-

1. Whether the Land Acquisition Act Cap 233 section 29 imposes a public duty on the Defendant to issue the warrant: and
2. Whether it is a proper exercise of the court’s discretion in the instant case to enforce this duty by an Order for Mandamus against the Defendant.

[18] The above issues will be dealt with below, in light of the law and the submissions of Counsel.

THE LAW

[19] Judicial review, generally, is the procedure by which the Supreme Court ensures that inferior courts and administrators act lawfully and within their powers. – (see *The Caribbean Civil Court Practice 2011*.) Applications for judicial review are dealt with in Part 56 of the Civil Procedure Rules (CPR) 2000 (the Rules).

¹ page 431, note 34.1

[20] Part 56.1 (3) of the Rules states that the term “judicial review” includes the remedies (whether by way of writ or order) of:-

- a)
- b) mandamus, for requiring performance of a public duty, including a duty to make a decision or determination or to hear and determine any case; and,
- c)

[21] According to Supperstone², - “An order of mandamus or a mandatory order is a coercive remedy granted by the High Court and directed to an inferior court, tribunal, public authority or any other body or persons who are susceptible to judicial review which compels it to do some particular thing, specified in the order, which it is under a public law duty to do.” The learned writers further state that the coercive and mandatory nature of the Order means that it is most appropriate in relation to cases where the public authority has a clear and mandatory statutory duty to do a certain thing.

ISSUE # 1 - WHETHER THE LAND ACQUISITION ACT CAP 233 SECTION 29 IMPOSES A DUTY ON THE DEFENDANT TO ISSUE THE WARRANT.

[22] Section 29 of the Land Acquisition Act (the Act) Cap 233 provides as follows:-

“All amounts which have been awarded by way of compensation under this Act, including interest and costs to be paid by the authorized officer, and all costs, charges and expenses which shall be incurred under the authority of this Act, shall be paid out of the Treasury on the warrant of the Minister of Finance.”

[23] It is therefore undisputed that, in the case at bar, a statutory duty is imposed on the Minister (the Defendant). Significantly, the Defendant does not deny that this is so. In paragraph 9 of his Affidavit filed on the 18th day of February 2013, Mr. Harold Lovell deposes as follows:-

“That I admit the existence of the provision of section 29 of the Land Acquisition Act, but state that the warrant has not been issued due to my actual knowledge of the impossibility of the Treasury to

² Supperstone, Goudie and Walker – Judicial Review -4th edition page 570, paragraph 16.6.2

meet the compensation payment given the Government's current fiscal and financial challenges which continue."

[24] In his Statement of Facts, Issues and Law, Learned Counsel for the Claimant state "these admissions are conclusive as to the entitlement of the Claimant to the relief claimed in these proceedings." In the instant case, the Court finds that there is a clear duty imposed on the Defendant, as opposed to a mere discretion. Accordingly, no further adjudication on this issue is necessary.

[25] The Court now moves on to address the second issue, (Issue #2) - namely:-

WHETHER IT IS A PROPER EXERCISE OF THE COURT'S DISCRETION IN THE INSTANT CASE TO ENFORCE THIS DUTY BY AN ORDER FOR MANDAMUS AGAINST THE DEFENDANT.

[26] The law is settled that the remedies available on judicial review are discretionary in nature. Further, in the case of **Chief Constable of the North Wales Police v Evans**³, the Court held that the grant of mandamus (a mandatory order) is, as a general rule, a matter for the discretion of the Court. An order of mandamus may be refused where there are practical problems that would arise from making such an order, for example, if the form of the order may require detailed supervision by the court, or where it appears that it would be futile in its result. It will also not be issued if it would cause administrative chaos and public inconvenience. (see Supperstone, page 571, paragraph 16.6.3).

[27] As stated above, the Defendant does not deny the existence of a statutory duty imposed on him to issue a warrant. He states, however, that the Government is unable to meet its statutory obligations due to financial constraints. He states that there is no money in the Treasury; that the Government has been experiencing constraints given the state of the economy since 2009; that the Government's fiscal challenges and debt arrears have necessitated its development and implementation of a Fiscal Consolidation Programme, which is being supported by the IMF through

³ [1982] 3 All ER 141

a Stand By Arrangement, to better align revenue with expenditure. The Defendant further states that, well before the award by the Board of Assessment, the Government had entered into an agreement with an investor to develop the lands in consideration of a sum that would have satisfied the award which was generally in keeping with two independent valuations obtained by the Government, but the increase in the compensation awarded by the Court of Appeal has proved a challenge for the investor.

[28] How then should the Court exercise its discretion? The learned writers of Supperstone⁴ state:-

“The court will take a liberal view in determining whether or not the order should issue, not scrupulously weighing the degree of public importance attained by the matter which may be in question, but applying the remedy in all cases to which, upon a reasonable construction, it can be shown to be applicable.”

[29] Albert Fiadjoe in his text *Common Wealth Caribbean Public Law*, - (3rd Edition page 290) states that “a number of technical rules” attend the remedy of mandamus. The writer adds that “while the requirement of locus standi appears to be strict, there is a rather strange rule which says that for mandamus to issue there must be a demand coupled with a refusal to perform the duty.” - **Re Maharaj**⁵; **D’Aguiar v D’Andrade**⁶. However, the law is settled that, even though there has been no refusal by the Minister, the courts will intervene where delay amounts to a refusal - **R v Secretary of State for the Home Department, ex.p. Phansopkar**⁷ (page 573, Supperstone, paragraph 16.6.7 -, note 4.)

[30] In the exercise of my discretion, I have to ensure that I weigh all the relevant issues in the scales of equity and fairness. However, I have to exercise my discretion accordingly to well-settled principles and authorities. In the Privy Council decision of *Gairy v Att. General of Grenada* (PC 29/2000) (the Gairy case) it was held inter alia, that the obligation rests on the Minister to ensure that the debt owed by the state to the appellant is discharged. The Board in that case ordered inter alia that “the Minister of Finance shall take all steps necessary to procure that

⁴ page 571, paragraph 16.6.3

⁵ (1966) 10 WIR 149

⁶ (1962) 4 WIR 141

⁷ (1976) Q.B. 606

payment be made to the appellant forthwith.....” At paragraph 31 of the said Judgment, Lord Bingham of Cornhill, who delivered the judgment, had this to say:-

“If the exigencies of public finance prohibit the immediate payment to the appellant of the full sum outstanding, the Attorney General, representing the Minister of Finance, may apply to the Judge for approval of a schedule of payment by installments.”

I therefore endorse the submission of Learned Counsel for the Claimant that the Gairy case provides authority that “the fiscal difficulties of a government do not constitute justification for the refusal to grant an Order of mandamus.” I am also mindful of the decision of the Court of Appeal, in particular that the Court refused the Defendant a stay of execution. I am therefore mindful of the fact that my discretion is circumscribed by my jurisdiction. I am also mindful of the fact that there is a clear and mandatory statutory duty imposed on the Minister to issue a Warrant. This is conceded by the Defendant. The law is settled that a statutory duty must be performed without unreasonable delay. I find that, in the instant case, there has been an unreasonable delay by the Defendant in paying the monies due. I find that this delay constitutes not only a failure, but a refusal to do so. On the other hand, I am mindful that the Defendant, in his capacity as Minister of Finance, has asserted that the funds are not available from the Treasury to pay the compensation to the Claimant. I am therefore mindful of the practical effect of the grant of the order which the Claimant seeks. I am also mindful that failure to obey a mandatory order (the order of mandamus) is a contempt of court.

[31] Bearing in mind the statement of Lord Bingham referred to in paragraph 30 above, I am of the view that, in all the circumstances of the instant case, I should exercise my discretion in favour of enforcing the duty imposed on the Minister (the Defendant) by an Order of Mandamus. I therefore grant the relief prayed for by the Claimant in the Fixed Date Claim in the following terms:-

MY ORDER IS AS FOLLOWS:-

- a) The Court declares :-
 - i). That the Defendant is under a public duty to issue a Warrant for payment from the Treasury of the sums awarded to the Claimant as compensation, interest and costs under the provisions of the Land Acquisition Act Cap 233 for the acquisition of its property;
 - ii). That the Defendant has wrongfully failed to carry out the said duty to issue the said Warrant.

- b) The Court makes an order for Mandamus requiring the Defendant to comply with his public duty under the Land Acquisition Act Cap 233 Section 29 to issue a warrant for the payment from the Treasury of the compensation, interest and costs payable to the Claimant in relation to the compulsory acquisition of Parcels 55, 56 and 57 Block 32 3282 A St. Phillip's South Registration Section by the Government of Antigua and Barbuda.

- c) The Court orders that the Defendant pay to the Claimant costs to be agreed or else assessed.

- d) The Court refrains from awarding damages in light of the fact that interest is accruing on a daily basis.

JENNIFER REMY
Resident High Court Judge
Antigua and Barbuda