THE EASTERN CARIBBEAN SUPREME COURT
IN THE COURT OF APPEAL

SAINT LUCIA

SLUHCVAP2016/0021

BETWEEN:

JEROME MONTOUTE
(By his Personal Representative, Theodora Montoute)

Appellant

and

THE ATTORNEY GENERAL OF SAINT LUCIA

Respondent

Before:

The Hon. Mr. Davidson Kelvin Baptiste	Justice of Appeal
The Hon. Mde. Gertel Thom	Justice of Appeal
The Hon. Mr. Paul Webster	Justice of Appeal [Ag.]

Appearances:

Mr. Gregory Delzin instructed by Ms. Renée T. St. Rose of FOSTERS for the Appellant
Mrs. Brender Portland-Reynolds, Solicitor General, with her Mr. Rene Williams and Mr. Kurt Thomas for the Respondent

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2018: June 20;
2019: May 24.

Civil appeal – Compulsory Acquisition of Land – Land Acquisition Act – Compensation for compulsory acquisition – Duty to appoint a board of assessment – Whether the Board of Assessment erred in awarding adequate as opposed to full compensation – Interest – Compound Interest – Simple Interest – Special Value – Whether the board of assessment erred in not making an award for Special Value – Solatium – Whether the board of assessment erred in not making an award for Solatium – Queen's Chain – Ownership of property forming part of the Queen's Chain

In May 1970 the Government of Saint Lucia compulsorily acquired various tracts of land in the quarter of Gros Islet for a public purpose. The compulsorily acquired lands included approximately 25 acres (the "Acquired Land") owned by the appellant, Jerome Montoute ("Mr. Montoute"). Negotiations both before and after the acquisition failed to arrive at a settlement of the amount of compensation due to Mr Montoute for the acquisition of his land. By letter dated 18th September 1974, Mr. Montoute's solicitor, Mr. Vernon Cooper, wrote to the Government requesting the appointment of a board of assessment pursuant to the section 12 of the Land Acquisition Act ("The Act") to assess the amount of compensation due to Mr. Montoute. This was not done, but it appears that there were arbitration proceedings regarding the compensation to be paid to Mr Montoute. On 6th December 1976 Mr. Cooper wrote to the Authorised Officer withdrawing from the arbitration proceedings and opting to revert to negotiations by private treaty. The letter also accepted the offer contained in a letter by the Authorised Officer dated 18th March 1970. The offer was for monetary compensation plus Crown Lands, but nothing came of it. In 1982 the Government withdrew all offers and instructed Mr. Montoute to make private arrangements for grazing his cattle. Mr. Montoute continued to press the Government for a settlement of his claim. He received sporadic payments of principal and interest during the period 1970 to 2002.

In 2007 Mr. Montoute filed a constitutional motion seeking redress for the Government's failure to compensate him ("the Constitutional Motion"). In July 2008 the learned judge granted the Constitutional Motion and ordered that Mr. Montoute be compensated for the value of his land as at the date of assessment with interest at a rate to be assessed by the Board. The learned judge also awarded the costs of the Constitutional Motion to Mr. Montoute to be assessed under CPR 65.12 if not agreed.

The Government appointed a board of assessment in March 2010, having agreed to do so two years earlier during the hearing of the Constitutional Motion and some 40 years after the acquisition. Mr. Montoute passed away by the time that the Board of Assessment ("the Board") heard the claim in June 2012.

The Board delivered its decision in July 2016 and awarded $155,000.00 as compensation for the value of the Acquired Land, $34,750.00 for disturbance, interest at 6% per annum from the date of acquisition until payment, and $100,000.00 costs ("the Decision"). The total compensation award as at the date of the Decision was $1,433,105.20, plus the $100,000.00 costs. The $1,433,105.20 included compound interest. Being dissatisfied with the Board's decision, Mr. Montoute's personal representative appealed to this Court. The issues before this Court are; (1) the amount of land acquired by the Crown and the ownership of an additional 4.5 acres formerly occupied by Mr. Montoute, being a part of the Queen's Chain; (2) the responsibility for the inordinate delay in compensating Mr. Montoute; (3) whether the Board erred and awarded 'adequate' compensation as opposed to 'full' compensation to Mr. Montoute; (4) the validity of the method used by the Board to assess the value of the Acquired Land; (5)

compound interest; (6) the claim for compensation as special value for the Acquired Land, severance and solatium.; and (7) costs.

Held: Allowing the appeal in part and making the orders set out in paragraph 72 of this judgment that:

1. The Queen's Chain is that strip of land from the high water mark inland around the entire island of Saint Lucia that is retained by the Crown. Usage of the Queens Chain is always subject to permission from the Crown and the Crown retains the right to deny permission at any time. Mr. Montoute has never had title to the 4.5 acres forming part of the Queen's Chain.

   Article 355 of the Civil Code of Saint Lucia Cap 4:01 of the Laws of Saint Lucia applied; Malcolm Caplan et al v Michael DuBoulay et al SLUHCV1999/0029 (delivered 1st June 2001, unreported) followed; Article 1397 of the Civil Code of Saint Lucia Cap 4:01 of the Laws of Saint Lucia considered.

2. The State is vested with the responsibility for appointing a board of assessment under the Land Acquisition Act as soon as it becomes necessary. The Constitution mandates that the State must provide prompt payment of full compensation. In this case, a board of assessment was not appointed promptly following the compulsory acquisition of the Mr. Montoute's land in 1970 despite his constant requests. He had to resort to filing the Constitutional Motion in 2007 and it was not until after the judge's ruling in 2008 that the Government appointed the Board in 2010. The Board delivered its decision some 6 years later in 2016, an entire 46 years after Mr. Montoute's land was compulsorily acquired. The responsibility for the appointment of a board of assessment in a timely manner rests squarely at the feet of the State and the State must accept full responsibility for the delay in this case.

   Section 11 of the Land Acquisition Act Cap 5:04 of the Laws of Saint Lucia applied; Section 12 of the Land Acquisition Act Cap 5:04 of the Laws of Saint Lucia applied; Section 6(1) of the Constitution of Saint Lucia Cap 1:01 of the Laws of Saint Lucia applied

3. A person whose lands have been compulsorily acquired is entitled to full and prompt compensation for the value of his lands as at the date of acquisition, and to interest at a rate that is appropriate to give the expropriated landowner a just equivalent for his loss. The Board was correct in terms of valuing the land as at the date of acquisition. However, it fell into error when it said that its task included determining "adequate compensation to the Claimant." The use of the word "adequate" does not mean that the Board's award was not "full" in the sense contemplated by the Constitution. It is for this Court to determine whether the compensation

that was awarded was prompt and full compensation. The Board's award of compound interest satisfies the requirement of full compensation.

Section 19 of the Land Acquisition Act Cap 5:04 of the Laws of Saint Lucia applied; Section 21 of the Land Acquisition Act Cap 5:04 of the Laws of Saint Lucia applied; Section 6(1) of the Constitution of Saint Lucia Cap 1:01 of the Laws of Saint Lucia applied; Grand Anse Estates Limited v His Excellency Sir Leo Victor De Gale et al Grenada Civil Appeal No. 3 of 1976 (delivered 7th October 1977, unreported) followed.

4. The principle of full compensation contemplated by the Constitution means that the affected person should be restored as far as possible to the position that he would have been in had the acquisition not occurred. In valuing compulsorily acquired land, any increase in value that is due to the scheme for which the land is acquired should be disregarded.

   Section 19 of the Land Acquisition Act Cap 5:04 of the Laws of Saint Lucia applied; Pointe Gourde Quarrying and Transport Company, Limited v Sub-Intendent of Crown Lands [1947] AC 565 applied; Mon Tresor and Mon Desert Limited v Ministry of Housing and Lands and another [2008] UKPC 31 applied;

5. The Board erred in the method used to assess the value of the Acquired Land. At the request of the parties this Court assessed the open market value of the Acquired Land. The Court applied the comparables method based on sales of comparable properties in the general area at the relevant time. This method was appropriate in this case because there was at least some evidence of comparable sales before the Board. The market value of the Acquired Land is assessed at $6,500.00 per acre for the 25 acres acquired, or $162,500.00, plus $34,750.00 for disturbance. This resulted in a total of $197,250.00 as the value of the Acquired Land as at the date of acquisition.
6. Compound interest can be awarded at common law as damages for non-payment of debt or breach of contract or tort, subject to the rules relating to remoteness and causation. The Board's award of compound interest was not challenged on appeal except as to quantum and was fully justified on the exceptional facts of this case. Compound interest should continue to accrue on the amount awarded after the date of the award.

   Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v Inland Revenue Commissioners and another [2007] 4 All ER 657 applied; Andrey Adamovsky and another v Andriy Malitskiy and another BVIHCMAP2014/0022 (delivered 3rd February, 2017 unreported) followed;

7. The special value of land is the value of property to the owner over and above the market value. The owner is entitled to the full market value of

the property ascertained at the time of acquisition plus any special value that is peculiar to him or her. The court or assessing tribunal must be satisfied as a matter of fact that a prudent buyer would be willing to pay the extra or special value rather than not get the land. There is evidence that Mr. Montoute carried on certain activities on the property and though it cannot be doubted that these activities were important to him and would have added to the value of the Acquired Land, the Board was not satisfied that they were of such a nature as to make them peculiar to him and of special value. This is a finding of fact by the Board based on the evidence that was before it and there is no proper basis for this Court to interfere with the finding.

Arkaba Holdings v Commissioner of Highways (1969) 19 LGRA 398 applied;

8. Where a person's land is severed by compulsory acquisition and the value of the land retained is reduced as a result of the severance, he is entitled to compensation, over and above the market value of the acquired land, for the decrease in value of the retained land. The record shows that the retained land is backlands and/or swamps to which Mr. Montoute did not provide evidence of any decrease in value other than to say that the retained land is now unusable. The evidence was reviewed by the Board and it did not allow the claim for severance. This is a finding of fact by the Board that is supported by the evidence, or the lack thereof, and there is no proper basis for this Court to interfere with the finding.

9. Solatium in the context of compulsory acquisition of property is an award to the expropriated landowner for inconvenience and emotional distress caused by the taking of his property. The award has nothing to do with the value of the acquired land. The Board refused the claim for solatium. The right to compensation for compulsorily acquired land is a statutory right and the entitlement to solatium, wherever it is available, is pursuant to a statute. There is no mention of solatium in the Land Acquisition Act of Saint Lucia and counsel has not brought any case to the Court's attention to suggest that it is otherwise available in Saint Lucia. The Board was therefore correct, albeit for different reasons, to dismiss the claim for solatium.

10. The costs of the Constitutional Motion was not a part of the costs of the proceedings before the Board and is not recoverable in these proceedings. There is no basis for this Court to interfere with the award of $100,000.00 by the Board.

JUDGMENT

[1] WEBSTER JA [AG.]: This is an appeal against the decision of the Board of Assessment dated 15th July 2016 regarding an award of compensation to Mr. Jerome Montoute ("Mr. Montoute"), for the compulsory acquisition by the Government of Saint Lucia, of his land located in the quarter of Gros Islet.

Background

[2] By a deed of sale executed on 29th March 1956, Therona Emile conveyed to Mr. Montoute, an agriculturalist, land that formed part of the Bellevue Estate in Gros Islet. The conveyed land was described in the deed of sale as "...comprising thirty-two acres situate at Gros Islet in the Island of Saint Lucia …" according to the plan of Adrien Monplaisir ("Mr. Monplaisir") Land Surveyor, dated 18th December 1916"[1] and forming part of the Bellevue Estate. In this judgment, the land conveyed to Mr Montoute is referred to as "the Property" and the area of the Property that was acquired by the Crown as "the Acquired Land". Mr. Montoute used the Property for raising livestock, fishing and farming, which provided his sole source of income.

[3] On 30th December 1969, the Government, in the National Budget address, announced its intention to acquire lands in the quarter of Gros Islet as part of a Government project for the quarter's redevelopment. The project involved the acquisition of several pieces of land to facilitate the construction of the Pigeon Island Causeway, the establishment of the Rodney Bay Marina and the draining of swamps in the Reduit environs. During the period leading up to the acquisition, Mr. Montoute offered to sell the Property to the Government by private treaty at EC$1.00 per square foot, or a total price of EC$1,110,780.00. The Authorised Officer refused the offer on 18th March 1970 on the basis that there was no

[1] Deed of Sale at page 6/174 of the Record of Appeal.

"…*market evidence relating to the sales of similar comparable lands which would support the quoted asking price.*"[2]

[4] By Declarations of Compulsory Acquisition published in the Gazette of Saint Lucia on 16th and 23rd May 1970, the Government compulsorily acquired approximately 94 acres of land forming part of the Belle Vue Estate of which the Acquired Land formed part. Mr. Montoute and the Government commenced negotiations for the compensation to be paid for the Acquired Land but failed to arrive at a mutually satisfactory agreement by the time of the formal land acquisition. On 18th June 1970, all of the acquired lands, including other acquired lands in the general area, were conveyed to Rodney Bay Limited, a private company that was carrying out the redevelopment. The company allotted 1,800,000 fully paid $1.00 shares to the Government.

[5] After the compulsory acquisition, negotiations continued for the payment of compensation to Mr. Montoute, but with no real success. By letter dated 18th September 1974, Mr. Montoute, by his solicitor, Mr. Vernon Cooper ("Mr. Cooper"), wrote to the Government requesting the appointment of a board of assessment pursuant to the Land Acquisition Act[3] ("The Act"). On 14th March 2008 Mr. Peter Felix ("Mr. Felix"), the then Commissioner of Lands, filed an affidavit in a related constitutional claim filed by Mr. Montoute, in which he deposed that a board of assessment was appointed in 1974.[4] There is no other evidence to confirm that a board of assessment was appointed in 1974, but it appears that there were arbitration proceedings regarding the compensation to be paid to Mr. Montoute for the Acquired Land at about that time. On 6th December 1976, Mr. Cooper wrote to the Authorised Officer withdrawing from the arbitration proceedings and opting to revert to negotiations by private treaty. He also accepted the offer contained in the Authorised Officer's letter of 18th March 1970,

[2] Record of Appeal 8/223.
[3] Cap 5:04 of the Laws of Saint Lucia.
[4] Record of Appeal 7/204.

of monetary compensation plus Crown Lands at Beausejour but nothing came of this. In 1982, the Government withdrew all offers and instructed Mr. Montoute to make private arrangements for grazing his cattle. Mr. Montoute continued to press the Government for a just settlement.

[6] The Government made sporadic payments of principal and interest to Mr. Montoute as compensation during the period 1970 to 2002 totalling EC$224,456.69. The last of these payments was one of EC$126,906.69 in July 2002.

[7] Remarkably, a board of assessment was not appointed, despite Mr. Montoute's years of consistent requests. This led Mr. Montoute to file a constitutional motion in 2007 seeking redress for the Government's failure to compensate him for the Property - Jerome Montoute v Attorney General[5] ("the Constitutional Motion"). The Constitutional Motion was heard by the High Court in July 2008. At the hearing, the Government agreed to appoint a board of assessment. In August 2008, Cottle J made an order that "Mr. Montoute is entitled to the value of his lands at the date of assessment. He is also entitled to interest at a rate which the Board will assess in an effort to secure him full compensation."[6] It was only after the completion of the Constitutional Motion that the Government appointed a board of assessment in March 2010, some 40 years after the land was acquired. The Board of Assessment ("the Board") heard the claim in June 2012, by which time Mr. Montoute had died.

Findings of the Board of Assessment and issues arising

[8] The Board delivered its decision ("the Decision") four years after its appointment in July 2016. It awarded $155,000.00 as compensation to Mr. Montoute for the Acquired Land, $34,750.00 for agreed loss of livelihood (disturbance), interest at

[5] SLUHCV2007/0901 (delivered 10th July 2008, unreported).
[6] Jerome Montoute v Attorney General at SLUHCV2007/0901(delivered 10th July 2008, unreported) at paras. 13.

6% per annum from the date of in 1970 until payment, and $100,000.00 costs. The total compensation award as at the date of the Decision was $1,433,105.20, plus the $100,000.00 costs.[7] The $1,433,105.20 included compound interest. Being dissatisfied with the Decision, Mr. Montoute's personal representative appealed to this Court. The notice of appeal lists 16 grounds of appeal, some of which overlap. The issues that arise from the findings of the Board and upon distilling the grounds of appeal are:

(i) The amount of land acquired by the Crown and the ownership of that part of the Property measuring 4.5 acres, being a part of the Queen's Chain.

(ii) The responsibility for the inordinate delay in compensating Mr. Montoute.

(iii) Whether the Board erred and awarded 'adequate' compensation as opposed to 'full' compensation to Mr. Montoute.

(iv) The validity of the method used by the Board to assess the value of the Acquired Land.

(v) Compound interest

(vi) The claim for compensation as special value for the Acquired land, severance and solatium.

(vii) Costs.

Issue I: The amount of land acquired by the Crown and the ownership of that part of the Property measuring 4.5 acres, **being a part of the Queen's Chain.**

[9] The area of land over which Mr Montoute claimed ownership included 4.5 acres of the Queen's Chain. The Board found that this area belonged to the Crown and so was not a part of the land acquired and no compensation was due to Mr. Montoute

[7] At paras. 17 and 18 of the Decision.

for it. Compensation was due for only the remaining 25 acres owned by Mr Montoute.

[10] Counsel for Mr. Montoute, Mr. Gregory Delzin, challenged this finding and submitted that the land compulsorily acquired by the Crown included the 4.5 acres of the Queen's Chain. He supported this by reference to article 1397 of the Civil Code of Saint Lucia[8] which recognises that a buyer may recover damages from the seller if he was ignorant that the thing sold did not belong to the seller. Therefore, the Civil Code acknowledges that loss may be occasioned by the belief that the deed of sale conveyed the Queen's Chain to Mr. Montoute for value, even if erroneously. He submitted that as the Queen's Chain was later conveyed by the State to Rodney Bay Limited for value, and that both the State and Mr. Montoute treated the Queen's Chain as being conveyed for value, that value cannot disappear upon Mr. Montoute claiming compensation for his loss.

[11] Learned counsel submitted further that the Board also fell into error when it held that only 25 acres of Mr. Montoute's land were compulsorily acquired. He contended that the Board failed to give consideration to the fact that the notice of acquisition which purported to acquire all of Mr. Montoute's land relied on Mr. Montoute's deed which conveyed to him 32 acres of land as was shown on the December 1916 plan of Mr. Monplaisir. He argued that since the Crown impliedly represented that it was acquiring what was in the notice of acquisition and the parties acted accordingly, the equitable principle of conventional estoppel prevents the Crown from resiling from that position when the issue of compensation was being considered. Further, the jurisdiction of the Board is determined by the notice of acquisition and the Board erred by effectively overriding the State's acquisition notice and finding that only 25 acres of land were acquired.

[8] Cap 4:01 of the Laws of Saint Lucia.

[12] The respondent's position on the amount of land that was acquired, as articulated by the Solicitor General, Mrs. Brender Portland-Reynolds, was that despite what was stated in the deed, there was sufficient evidence for the Board to find that only 25 acres of land were acquired. She argued that the evidence before the Board showed that part of the land described in the deed of sale consisted of the Queen's Chain but there was no documentary evidence of a grant of the Queens Chain to Mr. Montoute or his predecessors. Further, that the discrepancy between the 32 acres description in the deed derived from the 1916 survey plan and the current size of the Property of 28.14 acres could be accounted for by evidence before the Board of erosion and accretion, and/or by improved surveying methods. The Solicitor General submitted that based on the evidence, the Board was entitled to disregard the Queen's Chain in determining the area of land acquired and the Board's decision to award compensation in respect of 25 acres of land was correct and therefore should not be disturbed.

Discussion

[13] The Queen's Chain in Saint Lucia is that strip of land from high water mark inland around the entire island that is owned by the Crown. Article 355 of the Civil Code which establishes that the Queen's Chain is retained by the Crown states:

> "Roads and public ways maintained by the State, the Queen's chain, the sea-shore, lands reclaimed from the sea, ports, harbours and roadsteads, and generally all those portions of territory which do not constitute private property, are considered as being dependencies of the crown domain."

[14] The history and characteristics of the Queens Chain were considered by Barrow J in Malcolm Caplan et al v Michael DuBoulay et al.[9] The claimants claimed customary rights of usage and enjoyment to the Queen's Chain due to their ownership of the hinterland. They argued that this ownership gave them actual possession. While the Court accepted that the owners of the property had long enjoyed the use of the Queen's Chain, it found that this usage was always subject to permission from the Crown and the Crown retained the right to deny permission

[9] SLUHCV1999/0029 (delivered 1st June 2001, unreported).

at any time. In his examination of the history behind the Queen's Chain, Barrow J at paragraph 27 of his judgment noted that the law pertaining to the Queen's Chain in Saint Lucia is rooted in "Ancient French Law" and referenced a 1757 Versailles Ministerial Dispatch that traced its history "including the reason for its existence, identified where it lies [and] recounted the practice of giving permission to owners of the hinterland to clear the lands to facilitate the exploitation of their plantations". Importantly, the Dispatch "exposed the abuse of the permission by persons treating the lands as their own and purporting to sell or mortgage or leave it by will"[10]. The learned judge affirmed that the Queen's Chain remained at all times the property of the Crown and explained that permission for usage was granted on the basis that the lands could be reclaimed when required for the service of the Crown or the public.

[15] The Declaration of Acquisition in this case states the following in relation to the Queen's Chain:

> "AND Whereas the land known as the Queen's Chain or the cinquante pas de la Reine adjoining the said lands mentioned and described in the second and fifth paragraphs of the Schedule attached hereto now being acquired have never been alienated or title thereto has never been relinquished and it is deemed necessary that the said lands should be reduced into actual possession of the Crown."

[16] It is clear that the Queen's Chain has always remained the property of the Crown and that Mr. Montoute has never had title to it. While article 1397 of the Civil Code may be a basis for saying that loss may be occasioned by the mistaken belief that the deed of sale conveyed the Queen's Chain to Mr. Montoute for value, the article makes it clear that damages for such loss may be recovered only from the seller. Mr. Montoute cannot seek to assert title to property that has always remained in the Crown's domain, or claim compensation from the Crown for property that was purportedly sold to him by a third party. His remedy, if any, for this breach lies against the person who sold the property to him. The Board was

[10] SLUHCV1999/0029 (delivered 1st June 2001, unreported) at para 27.

therefore correct in excluding the Queen's Chain from the area of land acquired and for which Mr Montoute is to be compensated.

[17] Mr. Delzin also raised the point that there is a significant difference in the size of the land acquired between the 32 acres based on the 1916 survey plan of Mr. Monplaisir referred to in the 1956 deed of sale, and the 28.14 acres on the 1971 survey plan. Bearing in mind the 55-year lapse of time between the surveys, and in the absence of expert evidence to the contrary, it was open to the Board to accept the testimony of Chief Surveyor, Mr. Felix, that the differences between the 1916 survey plan by Mr. Monplaisir and the later 1971 GI survey, could be attributed to the Survey Department doing more accurate checks and/or the property's coastline location possibly shifting over time due to accretion and erosion.

[18] The Board's decision on this issue is a finding of fact. It is settled law that an appellate court will not readily interfere with a trial court's findings of fact unless the trial court has misdirected itself or has come to conclusions on the facts that are plainly and manifestly wrong.[11] This principle applies equally in compulsory acquisition cases such as this one where the findings being challenged are of a tribunal established under the Act.[12] I am satisfied that the Board's conclusions that the Acquired Land was approximately 25 acres (as found by the Board) and did not include the Queen's Chain were based on the evidence in the case and that the Board did not err in coming to its conclusions. As such, this Court will not disturb the Board's decision to award compensation in respect of 25 acres (excluding the Queen's Chain).

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[11] Watt (or Thomas) v Thomas [1947] 1 All ER 582 at 587.

[12] Per Lord Scott of Foscote and Lord Carswell in Mon Tresor and Mon Desert Ltd v Ministry of Housing and Lands and another [2008] All ER (D) 372 at para 2, followed in this Court by Michel JA in Estate of Dame Bernice Lake and another v The Attorney General of Anguilla – AXAHCVAP2016/0003 (delivered 11th December 2018, unreported).

[19] Before leaving the issue of the size of the Acquired Land, I should mention a submission by Mr. Delzin that the Government is barred by the principle of conventional estoppel from asserting that the Land Acquired was not 32 acres. The principle applies where a party is barred from relying on a point because of the way that the parties to the contract or transaction have conducted themselves. The principle does not apply in this case for at least two reasons - it was not raised before the Board nor in Mr. Montoute's notice of appeal, and more importantly, there is no evidence of a shared intention between the parties, nor a representation by the Government, that the State was acquiring 32 acres. The submission is rejected.

Issue II: Whether the Board erred in finding that the delay in obtaining compensation was attributable to both parties.

[20] The Board of Assessment's found that both parties were responsible for the delays in compensating Mr. Montoute. He challenged this finding on the ground that it was against the weight of the evidence and wrong. His case on the point is that the State did not treat with him prior to acquisition as required by section 6 of the Act. The Government also failed to appoint a board of assessment, as is mandated by the Act, until 40 years after his land was acquired, despite his repeated requests. The delays breached his constitutional right to full and prompt compensation. In the circumstances the Board erred in attributing any part of the delay to him.

[21] Mrs. Portland-Reynolds argued that the delay in obtaining compensation was attributable to both parties. While she conceded that there was delay on the part of the State in appointing the Board of Assessment, she maintained that Mr. Montoute also caused delays by, among other things, rejecting a settlement offer, refusing to accept any further payment in relation to the Acquired Land due to dissatisfaction with the offer made, and withdrawing from arbitration proceedings. Mrs. Portland-Reynolds argues that based on the foregoing the

Board was correct in its finding that Mr. Montoute contributed to the delay in obtaining compensation.

Discussion

[22] Section 11 of the Act provides that matters relating to the payment and apportionment of compensation under the Act shall be submitted to a Board of Assessment. Section 12 vests in the State the responsibility of appointing a Board of Assessment as soon as it becomes necessary, and section 6(1) of the Constitution of Saint Lucia ("the Constitution")[13] mandates that the State must provide prompt payment of full compensation. However, instead of the prompt appointment of a board of assessment, Mr. Montoute was subjected to awaiting several cabinet conclusions with what he thought were unsatisfactory offers or offers that were later retracted. Although Mr. Montoute's land was compulsorily acquired in May 1970, and despite his constant requests for the appointment of a board of assessment, he had to resort to filing the Constitutional Motion in 2007. It was only after the completion of the Constitutional Motion in July 2008 and the judge's ruling that Mr. Montoute was entitled to full compensation for the compulsory acquisition of his land, that the Government appointed the Board. In fact, the Government did not appoint the Board until March 2010. To make matters worse, the Board did not deliver its decision until 2016, 6 years after its appointment and 46 years after Mr. Montoute's land was compulsorily acquired.

[23] Mr. Montoute should not have had to request the appointment of a board of assessment or resort to filing the Constitutional Motion in order to complete the compensation process. Furthermore, Mr. Montoute's attempts at settlement were refused by the Government or met with offers to settle that were varied or later retracted. Mr. Montoute was not expected to agree to the Government's proposals if he found them unreasonable. A landowner is entitled to demand reasonable compensation. If the Government thought that his demands were unreasonable it

[13] Cap 1:01 of the Laws of Saint Lucia.

should have proceeded with the appointment of a board of assessment to decide the question of reasonableness. What the Government cannot do is to reject the landowner's offer and use that as a reason to delay the appointment of a board of assessment for an unreasonable period. The responsibility for the appointment of a board of assessment and the subsequent failure to do so in a timely manner rests squarely at the feet of the State.

[24] In this case, where the land was acquired in 1970 and the Board of Assessment was not appointed until 2010, I find that the Board erred in its conclusion that Mr. Montoute contributed to the delays in obtaining compensation and I would set aside its finding on this point. The State must accept full responsibility for the delay.

Issue III: Whether the Board erred and awarded **'adequate'** compensation as **opposed to 'full' compensation** to Mr. Montoute

[25] Having found that the State was responsible for the delays, I will now examine the issue of compensation. On this point, Mr. Delzin submitted that in coming to its decision the Board did not properly consider Cottle J's judgment in the Constitutional Motion and thus erred by applying a test that sought to award "adequate compensation" based on factors outlined in section 19 of the Act, as opposed to "full compensation" as mandated by section 6(1) of the Constitution. Learned Counsel also submitted that the Board failed to consider that the compulsory acquisition and possession of Mr. Montoute's land under the Act was unconstitutional as it did not provide for the prompt determination and payment of full compensation. He argued that the constitutional imperative to determine full compensation overrides the stipulations in the Act that seek to limit an assessment to adequate compensation. He maintained that full compensation should take into account the potential for development of the land as publicly advertised and promulgated by the Crown in its public statement prior to acquisition. Mr. Delzin submitted that in the circumstances of this case ,which involve breaches of the Constitution, full compensation must include an assessment of damages, which he

suggested in this case required "…*damages and exemplary damages as a remedy and full compensation by way of assessment."*

Discussion

[26] In the Constitutional Motion, Cottle J examined the validity of sections 19 and 21 of the Act in light of section 6(1) of the Constitution. I will now consider the impact of his decision on the award to be made to Mr. Montoute.

[27] Section 19 of the Act outlines the rules for assessing compensation under the Act. Section 19(a) states:

> "[T]he value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, in its condition at the time of acquisition, if sold in the open market by a willing seller, might have been expected to have realized at a date 12 months prior to the date of the second publication in the Gazette of the declaration under section 3.
>
> However, 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 or her other property or his or her earnings, or for disturbance, or any other matter not directly based on the value of the land;"

[28] Section 21 deals with interest payable to the landowner upon acquisition. The section states that:

> "The Board, in awarding compensation may add thereto interest at the rate of 6% per year calculated from the date upon which the authorised officer entered into possession of the land acquired until the date of the payment of the compensation awarded by the Board."

[29] Section 6(1) of the Constitution addresses the protection of a person's rights where his property has been compulsorily acquired. It provides 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 for a public purpose and except where provision is made by a law applicable to that taking of possession or acquisition for the prompt payment of full compensation."

[30] Cottle J considered the landmark case of Grand Anse Estates Ltd v His Excellency Sir Leo Victor De Gale et al [14] which dealt with the acquisition of approximately 25 acres of the landowner's property in Grenada for the purpose of a communal pasture. The Land Acquisition Ordinance of Grenada contained the equivalent provision to section 19(a) of the Act in Saint Lucia that the value of the land should be assessed at a time 12 months prior to the date of acquisition. On the question of the constitutionality of this provision, St. Bernard JA, giving the leading judgment of the Court of Appeal, found that the provision infringed the fundamental right to full compensation enshrined in section 6(1) of the Constitution because it limited the value of the land acquired to a value 12 months prior to the date of acquisition. To that extent, section 19(a) was ultra vires.

[31] The Court of Appeal also found that the Land Acquisition Ordinance of Grenada did not provide for the prompt payment of full compensation. St Bernard JA opined that

> "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." [15]

Applied to the issue of interest, St. Bernard JA found that the arbitrary restriction of a rate of interest was unjustifiable and that interest payable must be 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."[16]

[32] Cottle J adopted the reasoning of the Court of Appeal in the Grand Anse case and found that "sections 19 and 21 of the Land Acquisition Act should be read in such a way as to make them conform with the Constitution", and that Mr. Montoute was entitled to full compensation at the date of acquisition of his land with interest at a rate to be assessed by the Board to give him full compensation.

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[14] Grenada Civil Appeal No. 3 of 1976 (delivered 7th October 1977, unreported).
[15] Ibid page 6.
[16] Ibid p. 9.

[33] I agree with Cottle J's conclusion that the Grand Anse case reflects the legal position in Saint Lucia. A person whose lands have been compulsorily acquired is entitled to full compensation for the value of his lands as at the date of acquisition, and to interest at a rate which the Board will assess in an effort to secure him full compensation. However, this is in no way a finding that the Act is unconstitutional as suggested by Mr. Delzin. The Act is only unconstitutional to the extent that it breached section 6(1) of the Constitution requiring compensation to be assessed as at the date 12 months before the acquisition, and that interest should be at a fixed rate of 6%. The compensation must be full and prompt and the interest must be at a rate that is appropriate to give the expropriated landowner a just equivalent for his loss. The remainder of the Act remains in place subject to the overarching constitutional requirement that the compensation must be prompt and full.

[34] The Board in coming to its conclusion on the issue of Mr. Montoute's compensation was correct in terms the date of valuation, as it stated in paragraph 10 of its decision that regard must be had to "the market value of the land on the date of the acquisition". However, the Board fell into error when, at paragraph 7 of its decision, it said that its task included determining "*adequate compensation to the Claimant."* However, the use of the word "adequate" *per se* does not mean that the Board's award was not full in the sense contemplated by the Constitution. It is for this Court to determine whether the compensation that was awarded 46 years after the acquisition, plus interest, was prompt and full compensation as required by the Constitution.[17]

Damages for breach of the Constitution

[35] Putting aside for now the Board's findings on compensation, I will deal with the claim for damages for breach of the Constitution as a part of the requirement for full compensation. Mr. Delzin submitted that the circumstances of this case warrant an award of damages in lieu of compensation for breaches of the Constitution.

[17] See paragraph 57 of this judgment.

[36] Mr. Montoute brought a constitutional motion and obtained a favourable result. While he is entitled to full compensation in accordance with the Constitution as defined in the Grand Anse case, this compensation is not damages for breach of the Constitution. Such damages can be awarded by the High Court that heard the motion. Cottle J did not award damages and there was no appeal against his decision. This Court is dealing with an appeal against the decision of the Board of Assessment and I do not think that the Board could have awarded damages for breach of the Constitution. In the circumstances, I find that the Board was required to award prompt and full compensation in accordance with the Act, but it was not required to award damages for breach of the Constitution. I therefore reject Mr. Montoute's claim for damages and/or exemplary damages for breaches of the Constitution.

Issue IV: Whether the Board failed to employ an appropriate method of valuation in determining the value of the Property

[37] The valuation exercise carried out by the Board to determine the value of the Property is set out in paragraphs 11 and 17 of the Decision. In paragraph 11 the Board stated as follows:

> "This BOA has with keen interest examined and scrutinized all relevant supporting documentary evidence associated with this 1969/1970 compulsory acquisition by the Respondent, and accepts the median value of EC$6,200.00 per acre of land. *Reference made to letter dated 21st January 1997 by Jerome Montoute to Chief Surveyor.* Having consideration for the parties, the evidence and findings of fact involved in this extraordinary 'compulsory land acquisition' of some 25 acres of land belonging to the Claimant, the late Jerome Joseph Montoute, herein represented by Theodora Montoute, this Board of Assessment finds that amount of *EC$155,000.00* to be adequate payment for the said lands".

The Board stated at paragraph 17 that:

> "... the assessed value *'per acre'* of land is the median of $EC6,200.00. This median is the average between the Claimant's on [sic] value of $EC2,400.00 per acre and the best value of the Chief Surveyor, which is, EC$10,000.00."

[38] While not conceding that Mr. Montoute's proposed value was $2,400 per acre, Mr. Delzin submitted that the Board erred in adopting a valuation that was based on calculating the median of the $2,400 per acre said to have been offered by Mr. Montoute, and the $10,000 per acre suggested by the Chief Surveyor, without a basis in law and the authorities for using this method. He argued that the Board did not adequately or at all consider the value of the land at the time of acquisition or the appropriate method of valuation. But if they did use this method the Board should have applied the best value of the Chief Surveyor of $10,000 per acre.

[39] I agree with Mr. Delzin's submission that this was not a satisfactory way of carrying out the statutory mandate of valuing the Acquired Land. In its crudest form, the Board simply took what they considered to be the two values proposed by the parties and split the difference. This was incorrect for several reasons. In the first place the Board's reference to a letter dated 21st January 1997 from Mr. Montoute to the Chief Surveyor in paragraphs 11 and 17 of the Decision is puzzling. In the letter Mr. Montoute proposed a value of $170,000 for the 25 acres, or $6,800 per acre, and not $2,400 per acre as stated in paragraph 17 of the Decision. Further, the January 1997 offer was made in the context of the Government's offer to sell lands at Beausejour to Mr. Montoute at a reduced price which may have been an inducement for him to offer a lower price for his land. To compound the confusion, I note that the Chief Surveyor's offer of $10,000 per acre was for only 5.14 acres of ocean-front land out of the 25 acres acquired. The rest of the Property that he described as "18 acres of backland" was valued at $2,500 per acre so that his overall value was significantly less than $10,000 per acre. Finally, I have not found anything in the record where Mr. Montoute offered or agreed to a value of $2,400.00 for his land. It is only Mr. Felix on affidavit who said that Mr. Montoute agreed to this amount.[18]

[18] See Record of Appeal at p. [1158].

[40] This leaves this Court in an invidious position. In the face of a defective method of assessment used by the Board, we should allow the appeal and remit the assessment be carried out by another board of assessment. But having regard to the fact that Mr. Montoute has waited 46 years to get the current award in 2016, this Court is loathed to send the matter for another assessment. We were also asked by counsel for both parties, in particular Mr. Delzin, not to remit the matter and to do our best to make an award based on the available material. The function of this Court is not to carry out an assessment, but to review the assessment carried out by a duly appointed board of assessment. However, in all the circumstances of this very unusual case, we will yield to the parties request and do our best to assess the compensation due to Mr. Montoute using the material that is available to us.

Principles and methods of valuation

[41] Mr. Delzin argued that the value of the land should be determined by the following principles:

(a) The price that a willing seller would ask in an open market.

(b) The value that would restore a person as far as possible to the position he would have been in had the acquisition not occurred.

(c) The potential value of the Acquired Land when a development scheme was contemplated and planning permission was certain.

[42] Taking these points in turn, the test of the willing seller is set out more completely in section 19(a) of the Act as not just what the willing seller would ask, but also what he might be expected to receive in the open market. In other words, the market value of the Acquired Land. This is usually determined by reviewing comparable sales of property in the same general area. Mrs. Portland-Reynolds submitted that the Board did consider the market value of the Acquired Land and comparable sales. That may be so, but if they did it is not apparent from the Decision. I will deal with the comparable sales method in further detail below.

[43] I agree with Mr. Delzin's second point that the principle of full compensation contemplated by the Constitution means that the affected person should be restored as far as possible to the position he would have been in had the acquisition not occurred. In practice this means that he should receive full compensation in accordance with the provisions of the Act as modified by the requirements set out above to comply with section 6 of the Constitution.

[44] Regarding the third point of the potential value of the Acquired Land, Mr. Delzin submitted that the concept of the open market would include in this case, the fact that the Government's budget address delivered prior to the publication of the acquisition notice stated that the Government intended to develop all the acquired lands, including the land acquired from Mr. Montoute. Had this been factored into the valuation the Board would have assessed a higher value. However, this submission is contrary to the general principle that in valuing compulsorily acquired land any increase in value that is due to the scheme for which the land is acquired should be disregarded, as stated in section 19(e)(v) of the Act and found in the case of Pointe Gourde Quarrying and Transport Company, Limited v Sub-Intendent of Crown Lands.[19]

[45] Mrs. Portland-Reynolds' relied on the Pointe Gourde case and submitted in response that full compensation as per the Grand Anse case does not include a consideration of the potential enhancement in value of the Property by virtue of the Government's development plans for the area, and that potential should be disregarded. She distinguished the case of Sri Raja Vyricherla Narayana Gajapatiraju Bahadur Garu v Revenue Divisional Officer, Vizagapatam [20] a decision of the Privy Council on appeal from the High Court of Madras, where the acquired land had unusual features or potentialities in the form of a constant supply of good drinking water at a comparatively low cost. Their Lordships

[19] [1947] AC 565.
[20] [1939] 2 All ER 317.

decided that the landowner must be compensated for this special potentiality. Learned counsel made the distinction between the potential for development of land (as in this case) and the special features or potentiality of the land such as the water supply in the Raja Gajapatiraju case. Mr. Montoute's land bore no inherently unique features or potentialities. Therefore, the proposed scheme to develop the Acquired Land was not a relevant consideration in assessing its value.

[46] We have reviewed the principles of assessment set out above and decided that the way forward is to assess the value of the Acquired Land, applying the principles in section 19(a) of the Act, subject to the modifications brought on by the Constitution, and determining the open market value of the Acquired Land based on other sales of comparable properties in the general area at the relevant time. This is generally regarded as the best way of assessing the market value of acquired property and would be appropriate in this case because there was at least some evidence, albeit limited, of comparable sales before the Board. Resort should be had to other methods such as the residual value, only where there is no evidence of comparable sales.[21]

Comparables

[47] There are two sources of comparables in the evidence. Mr. Charles Harewood ("Mr. Harewood"), a quantity surveyor with experience in valuing properties, inspected the Property in December 2008 and January 2009. He produced a report dated 19th January 2009 which contains a list of 10 sales between 1970 and 2004 of smaller properties carved out of the lands acquired by the State. Two of the sales are by the Crown in 1970 of undeveloped plots that are less than one acre. The selling prices were $0.04 and $0.06 per square foot, or $1,754 and $2,631 per acre respectively. Mr. Harewood gave evidence at the hearing before the Board and was cross-examined on his report.

[21] Per Lord Scott of Foscote and Lord Carswell in Mon Tresor and Mon Desert Ltd v Ministry of Housing and Lands and another [2008] All ER (D) 372 at para 7

[48] The other source of comparables is in the evidence of Mr. Felix who was at the material time the Chief Surveyor and the Authorised Officer for the Government. Like Mr. Harewood, Mr Felix is not a trained valuer. He filed an affidavit in the Constitutional Motion proceedings and produced a report on the acquisition of the Property as well as other property owned by the Montoute family also forming part of the Belle Vue Estate, in which Mr. Montoute had a one-sixth share. I will refer in this judgment to this other property as "the Family Property" and to the report as "the Felix Report". The Felix Report was not exhibited to an affidavit but it was admitted in evidence without objection as a part of the Government's documents, and Mr. Felix was referred to it while he was being cross examined.

[49] The Family Property comprised 48.32 acres and was also compulsorily acquired by the State in 1970. The compensation claim was heard by a board of assessment appointed under the Act and chaired by Mr. Winzey A. Bruno. The Bruno Tribunal, after referring to comparable sales, assessed the value of the land $6,000 per acre. The decision of the Bruno Tribunal is undated, but it was conducted pursuant to an acquisition notice dated in May 1970 and it is reasonable to infer that the valuation was as at May 1970.

[50] The Felix Report also mentioned the sale by the Government of all the acquired lands to Rodney Bay Limited in 1970 for $1,800,000. Mr. Felix provided information that the total amount of land sold under the deed was 260 acres giving a sale price in 1970 of $7,000 per acre. This conveyed property included Mr. Montoute's land. However, this data is of limited value because the 260 acres included lands that were close to but not a part of Belle Vue Estate.

[51] I prefer to be guided more by the valuation produced by the acquisition of the Family Land and to a lesser extent the figure arrived at by Mr. Felix as the average price of all the lands acquired by the State. These were large tracts of land as opposed to the small size of the two sales of less than one acre each sold by the

Crown in 1970. I also bear in mind that the preferred sales are not sales in the true sense in that the sellers were not willing sellers in the open market

[52] Taking all the limited data into consideration, and doing the best I can in the circumstances, I would assess the market value of the Acquired Land at $6,500 per acre yielding a total valuation for the 25 acres acquired of $162,500.00. I would add to this amount the $34,750.00 for loss of income (disturbance) which was the amount proposed by Mr. Montoute in his letter to the Chief Surveyor dated 21st January 1997 and awarded by the Board, making a total award of $197,250.00 as the value of the Acquired Land.

Issue V: Whether the Board erred by failing to award compound interest on its compensation award

[53] Ground 2.16 of the notice of appeal alleges that "The Board erred in law in failing to award interest at 6% compounded per annum on the assessed amount and costs from the effective date of the award (31st December 2015)." This is clear enough, but it is not how the appeal was presented by the appellant. Mr. Delzin was at pains to submit that the award of compound interest should run from one year after Mr. Montoute presented his letter of request for the appointment of a board of assessment in 1974 until payment. The premise of this allegation is entirely misconceived. At paragraph 17 of the Decision under the heading "Interest" the Board awarded $155,000.00 for the value of the land, $34,750.00 for loss of livelihood less "Claimant's listed cost of $5,000.00." This resulted in a principal award of $184,5000.00. This was followed by a table in the same paragraph setting out the Board's calculation of interest on the principal award. On close examination of the table, it is apparent that the Board awarded compound interest at 6% annually on the principal award, taking account at each step of the calculation of the interim payments made by the Government between 1971 and 2002, and arriving at a total amount due to Mr. Montoute as at the date of the award of $1,433,105.20. The only way that the Board could have arrived at this amount, or any amount close to it, was by adding interest on the amounts of

principal and interest outstanding from time to time. This is the classic definition of compound interest. In fact, had the Board awarded simple interest only on the amount of the award, even without taking account of the interim payments, the total amount due to Mr. Montoute at the time of the award would have been less than half a million dollars. There may have been errors in the Board's calculation of interest as submitted by Mr. Delzin. Any such errors will be cured by the calculation that we have ordered at the end of this judgment.

[54] The respondent did not counter appeal against the Board's use of compound interest in calculating the amount due to Mr. Montoute on the principal amount awarded. Therefore, it is unnecessary for this Court to determine whether the Board erred in not awarding compound interest because it did award compound interest, and there was no appeal against their decision to do so.

[55] I would only add that the House of Lords in Sempra Metals Ltd (formerly Metallgesellschaft Ltd) v Inland Revenue Commissioners and another[22] has extended the law to provide that compound interest can be awarded at common law as damages for non-payment of debt, breach of contract or tort, subject to the rules relating to remoteness and causation. The Board's award of compound interest is fully justified on the exceptional facts of this case.[23]

[56] In the circumstances the sole issue in the appeal regarding interest is whether compound interest should be awarded from the effective date of the award in 2015 until payment as claimed in ground 2.16 in the notice of appeal. I have no hesitation in finding that compound interest should continue to accrue on the amount awarded after the date of the award. Mr. Montoute, and now his estate, have been kept out of their entitlement for the expropriation of the Acquired Land, and the Board having awarded compound interest up to the date of the award,

[22] [2007] 4 All ER 657.
[23] This principle was accepted by this Court in Andrey Adamovsky and another v Stockman Interhold and another BVIHCMAP2014/0022 (delivered 3rd February, 2017 unreported).

there is no reason why the Board's award should cause compound interest to stop accruing. Ground 2.16 of the notice of appeal therefore succeeds on the issue of compound interest on the compensation award.[24]

[57] I also find that the Board's award of interest at 6% compounded annually from the date of the acquisition in 1970, which I find should continue to accrue until payment, is recognition of the inordinate delay in payment to Mr. Montoute and satisfies his entitlement to full compensation for the Acquired Land.

Issue VI: Whether the Board erred in its finding that no evidence was provided in support of Mr. **Montoute's claim for loss on the grounds of** special value, severance and solatium.

[58] In relation to the claims on the grounds of special value (ground 2.6), severance (ground 2.7), and solatium (ground 2.8), Mr. Delzin submitted that the Board erred in its finding that no evidence was provided in support of these claims. These points were not developed in his written submissions, he did provide the Court with supporting authorities, and generally did not pursue these claims with his usual vigor and enthusiasm. His submissions were limited to saying that Mr. Montoute's undisputed affidavit evidence and the exhibits and correspondence support his position regarding the compensation due to him. I will consider each of these claims in turn.

Special Value

[59] The special value of land, as the phrase suggests, is the special value of property to the owner over and above the market value of the property. The owner is entitled to the full market value of the property ascertained at the time of acquisition plus any special value that is peculiar to the owner. This additional value is over and above the market value and becomes a "special value" if the court or assessing tribunal is satisfied as a matter of fact that a prudent buyer would be willing to pay the extra or special value rather than not get the land. This

[24]Interest on the costs award is dealt with in paragraph 71 below.

was described by Bray CJ in Arkaba Holdings v Commissioner of Highways[25], a decision of the High Court of Australia, as:

> "It is, of course, well established that it is the value to the owner which must be paid, even if that value exceeds the market value...The additional element is commonly called "special value to the owner"...But this special value must, in my view, arise from some attribute of the land, some use made or to be made of it or advantage derived or to be derived from it, which is peculiar to the claimant and would not exist in the case of the abstract hypothetical purchaser. Would a prudent man in the position of the claimant have been willing to give more for this land than the market value rather than fail to obtain it or regain it if he had been momentarily deprived of it?"[26]

[60] There is evidence that Mr Montoute carried on activities on the Property such as fencing and irrigation to make it suitable for rearing livestock. It cannot be doubted that these activities were important to him and would have added to the value of the Property. But were they of such a nature as to make them peculiar to him? The Board obviously did not think so. They found at paragraph 13 of the Decision that -

> "The claimant has however submitted no evidence which would show or suggest *an attribute derived or to be derived from the said lands*...For example, had there been a family burial ground on the said lands or some other special and/or peculiar factor associated with the compulsory [sic] acquired lands, consideration could be given. Neither sentiment nor a long term attachment to the land will suffice."

This is a finding of fact by the Board based on the evidence that was before it. The members were obviously not satisfied that the activities carried out by Mr. Montoute on the Property to make it suitable for animal husbandry, were peculiar to him so as to justify an award for special value. There is no proper basis for this Court to upset this finding by the Board.

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[25](1969) 19 LGRA 398.

[26]Arkaba Holdings v Commissioner of Highways (1969) 19 LGRA 398 at p. 404.

Severance

[61] Where a person's land is severed by compulsory acquisition and the value of the land retained by him is reduced as a result of the severance, he is entitled to compensation, over and above the market value of the acquired land, for the decrease in value of the retained land. Mr. Montoute contended that after the acquisition his remaining land was unusable, which resulted in him losing the value of the severed portion. The record shows that the retained land is backlands and/or swamps and Mr Montoute did not provide evidence of any decrease in value other than to say that the retained land is now unusable. The Board reviewed the allegation and found at paragraph 14 of the Decision "That upon review of all the supporting documentary evidence in support of this claim, this Board of Assessment finds the evidence weak and unsatisfied." The Board did not allow the claim for severance. This is a finding of fact by the Board that is supported by the evidence, or the lack thereof, and there is no proper basis for this Court to interfere with the finding.

Solatium

[62] Solatium in the context of compulsory acquisition of property is an award to the expropriated landowner for inconvenience and emotional distress caused by the taking of his property. It has nothing to do with the value of the land acquired, nor any financial loss by the landowner. Mr. Montoute challenged the Board's finding that –

> "Solatium is arguably not a factor of consideration in assessing what adequate compensation is due to the Claimant. Under this umbrella consideration must be given for non-financial disadvantage resulting from the necessity for the person to relocate his or her principal place residence as a result of the acquisition. The Claimant submitted no evidence that he and his family resided on the said lands."[27]

[63] It is not clear why the Board adopted this narrow approach to the solatium claim, finding that Mr. Montoute was not entitled to an award for solatium because he did

[27] See Paragraph 16 of the Decision

not have to give up his residence. The members may have been guided by the fact that in some states in Australia, the legislation allows awards of solatium, but restricts it to cases where the landowner loses his main residence by the acquisition. For example, in New South Wales section 60 of the Land Acquisition (Just Terms of Compensation) Act 1991 provides solatium (described as "disadvantage resulting from relocation," in the most recent version of the 1991 Act) as being payable for "necessity of the person entitled to compensation to relocate the person's principal place of residence as a result of the acquisition." However, it is not so limited in the State of Victoria. Section 44 of the Land Acquisition and Compensation Act, 1986 (Victoria) allows an award "to compensate the claimant for intangible and non-pecuniary disadvantages resulting from the acquisition." Section 44 is not limited to the landowner's loss of his residence.

[64] It does not matter which of these rules for assessing solatium is to be preferred because neither applies in Saint Lucia. The right to compensation for compulsorily acquired land is a statutory right and the entitlement to solatium, wherever it is available, is pursuant to a statute. There is no mention of solatium in the Saint Lucian Land Acquisition Act and counsel has not brought any case to our attention to suggest that it is otherwise available in Saint Lucia. The Board was therefore correct, albeit for different reasons, to dismiss the claim for solatium. There is no proper basis to interfere with their decision.

Issue VII**: Mr. Montoute's claim for costs.**

[65] Mr. Montoute complained in ground 2.14 of his notice of appeal that the Board failed to consider properly or at all his client's claim for costs. Further, that his costs exceeded the amount awarded by the Board taking into account that he was successful in the Constitutional Motion that he was constrained to file to vindicate his rights arising from the delay in paying his compensation. The amended notice of appeal seeks an order for leave to submit a bill of costs covering the costs in the Court of Appeal and the Board of Assessment, and that such costs be assessed

costs. Presumably, the intention is to include the costs of the Constitutional Motion in the bill of costs.

[66] The point about the costs of the Constitutional Motion is easily disposed of. The Motion was a separate action and has no bearing on costs in the proceedings before the Board of Assessment. Cottle J awarded the costs of the Constitutional Motion to Mr. Montoute, such costs to be assessed under rule 65.12 of the Civil Procedure Rules 2000 unless agreed. The costs of the Motion were not and could not have been a part of the costs of the proceedings before the Board. His estate can seek to pursue those costs in the manner directed by the learned judge.

[67] Turning to the costs of the proceedings before the Board, section 22 of the Act provides that a claimant is entitled to receive the costs reasonably incurred in the pursuit of his claim. Costs are at the Chairman's discretion and he is not required to assess the costs under the costs regime in the CPR. No doubt he can look to the CPR for guidance, especially since there is no guidance in the Act for determining the reasonableness of the costs claimed. That would have been a matter entirely within the discretion of the Board.

[68] In this case I note that the proceedings before the Board were not complex and the hearing was completed in less than one day. There were three witnesses, only one of whom was an expert. There was undoubtedly a long build up to the assessment proceedings involving mainly meetings and correspondence. In the circumstances, I agree with the Solicitor General's position that the costs awarded by the Board were reasonable and that this Court should not interfere with the amount awarded. This ground of appeal is dismissed.

Conclusion

[69] I would allow the appeal and substitute an award for the value of the acquired land of $162,500.00, affirm the orders of $34,750.00 for loss of income and disturbance (together "the compensation award"), and $100,000.00 for the costs of proceedings before the Board of Assessment. I would affirm the Board's award of interest at 6% compounded annually on the compensation award (subject to payments made) from the date of acquisition on 23rd May 1970 to the date of payment.

[70] This leaves the issue of interest on the costs award. In ground 2.16 of the notice of appeal the Mr. Montoute claimed compound interest on the costs awarded from the date of the award. I do not think that the arguments in favour of compound interest on the compensation award post the Decision apply to the costs award and I would award simple interest at the statutory rate of 6% per annum from the date of the award on 15th July 2016 until paid.

Order

[71] I would allow the appeal in part and make the orders as to principal and interest as set out in the preceding paragraphs

Order

(i) The appeal is allowed in part.

(ii) The Appellant's estate is awarded $162,500.00 as compensation for the value of the Acquired Land and $34,750.00 for loss of income, making a total compensation award of $197,250.00.

(iii) The Estate is awarded interest at 6% compounded annually on the compensation award of $197,250.00 from the date of acquisition on 23rd May 1970 to the date of payment, subject to the deduction of all payments made by the State.

(iv) The Estate is awarded simple interest at 6% per annum on the costs award of $100,000 from 15th July 2016 to the date of payment.

(v) The parties shall file and serve calculations of compound interest in accordance with paragraph 3 above, and written submissions on the incidence and quantum of the costs of the appeal, within 30 days of the date of this order.

I concur
Davidson Kelvin Baptiste
Justice of Appeal

I concur
Gertel Thom
Justice of Appeal

By the Court

Chief Registrar