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Henchy J.  
Hederman J.  
McCarthy J.

THE SUPREME COURT  
1983 No 299

BRIAN HUSSEY, HENRY B. SISK  
AND DONALD CHAMBERS

v.

IRISH LAND COMMISSION

Judgment of Henchy J.  
delivered the 13th December 1984

(Hederman J. conc.)

This is an appeal against the disallowance of objections to the compulsory acquisition by the Land Commission of eight holdings. Strictly speaking there were eight separate cases, but as the objectors were the same in all the cases and the submissions of the objectors were likewise the same, they were heard together by the Appeal Tribunal. In that hearing the earlier disallowance by the Lay Commissioners of the objections was affirmed. The present appeal is from that decision of the Appeal Tribunal.

The objectors are Brian Hussey, Henry B. Sisk and Donald Chambers. They are directors of a company called Woodland Investments Ltd. That company is engaged in the

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business of afforestation. The objectors acquired the eight holdings as tenants in common so that they would be planted with trees and developed as commercial forestry by Woodland Investments Ltd.

In the case of each of these eight holdings in Co. Leitrim the lands were certified by the Land Commission as being required for the purpose of resale to the persons or bodies mentioned in s. 31 of the Land Act, 1923, as extended by s. 30 of the Land Act, 1950. Such a certificate is frequently referred to as a general certificate, in contradistinction to a special certificate which certifies that the lands are required for the relief of congestion in the immediate neighbourhood.

Two main criticisms have been made of the acquisition procedure adopted by the Land Commission in regard to these holdings. Firstly it is contended that the proposed acquisitions are vitiated and rendered invalid because they are inspired by bias or improper motive in that the real purpose of the acquisitions, it is said, is to prevent the

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lands being afforested by Woodland Investments Ltd.

Secondly it is contended that the acquisitions are outside the powers of the Land Commission because the lands are not yet required for the certified purposes.

As to the first of those criticisms, it seems reasonable to deduce that the fact that these lands were being purchased by the objectors so that they could be used for afforestation by Woodland Investments Ltd. was a primary part of the reason for acquiring them compulsorily. But it is undeniable that the lands were in any event liable under the relevant statutory provisions for compulsory acquisition. The fact that the statutory reason for acquisition was compounded by an ulterior motive does not invalidate the proposed acquisition when that motive is in keeping with the statutory policy. The statutory policy behind compulsory acquisition, whether on a special or a general certificate, is to benefit those in need of land for agricultural purposes. Afforestation, estimable though it may be as a means of utilising certain

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kinds of land, is inconsistent with normal agricultural use. If these lands are planted with trees, the trees will take about thirty years to mature, by which time, whether the trees will then be cut down or not, the lands will probably have been permanently lost to agriculture in the sense of producing what is normally understood to be agricultural produce. If lands are validly acquired in accordance with the statutory conditions, I do not consider that such acquisition is invalidated if it is carried out under a policy or motivation which looks on afforestation as not being designed to achieve the social and economic aims of the Land Acts.

The contention that the proposed acquisitions are outside the acquisition powers of the Land Commission, because they are not yet required for the certified purposes, rests primarily on the proven practice of the Land Commission in recent years in Co. Leitrim in regard to similar acquisitions. The evidence given before the Lay Commissioners showed that, by acquisitions under general certificates, the Land Commission had acquired an aggregate

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of some 3,600 acres of land in Co. Leitrim. The disposal of those lands to the permitted persons or bodies was at the rate of about 300 acres a year. While there was no specific evidence as to when and how the 300 acres in these eight parcels would be disposed of, the Land Commission did not give evidence to rebut the contention of the objectors that these 300 acres will fall to be dealt with in the same way as they have been disposing of the 3,600 acres. It is a reasonable inference, therefore, that the lands in question in this case will not be required for resale until some time in the future.

I conceive it to be a sound rule of law that, where power to acquire property compulsorily on specified terms and for specified purposes is conferred by statute, the power will be held not to have been validly exercised unless the exercise relied on has been strictly in accordance with the limitations laid down by the statute. Here, where the primary condition of the compulsory acquisition is that the lands are required (not will be

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required) for the purpose of resale to the specified persons or bodies, it is a necessary connexion between the power and its valid exercise that the lands be required for resale at the time when the compulsory acquisition takes place. Where the compulsory acquisition is called into question by an objection, the onus is on the Land Commission to show that the lands are required for the statutory purposes. If, as things turn out, the lands are not applied within a reasonable time for those purposes, the validity of the acquisition may be questioned.

In the present case the likelihood seems to be that, as in the case of other similar acquisitions, the lands will be put into a reserve, from which they will be resold to one of the certified persons or bodies sometime in the future. The Land Commission has virtually conceded that this is the case, that the lands are not at present required for resale. What is submitted by the Land Commission is that the power of compulsory acquisition relied on authorises the creation of a stockpile of land

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thus acquired, from which resales may take place from time to time in the indefinite future.

In my opinion, the power of compulsory acquisition relied on may not be validly exercised in that way. It may be that it would be desirable to vest in the Land Commission power to deal with compulsorily acquired land in that way, but I do not consider that the power relied on may be stretched to that extent. A special statutory provision would be needed to confer on the Land Commission power to build up a stockpile or reserve of compulsorily acquired land to be applied in the future for specified purposes. For an example of the vesting of such a power, see s. 77 of the Housing Act, 1966, which enables a housing authority to create a reserve for future use of land compulsorily acquired for housing purposes.

Because, in my opinion, the Land Commission has failed to show that it has acted within its powers in acquiring these lands, I would allow this appeal and uphold the several objections of the objectors.

*Approved*  
*S.H.*  
*14-12-84*