Privy Council Appeal No. 42 of 1946

Pointe Gourde Quarrying & Transport Company Limited - - - - - - - - - *Appellants*

v.

Sub-Intendent of Crown Lands - - - - - - *Respondent*

FROM

THE SUPREME COURT OF TRINIDAD & TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 29TH JULY, 1947.

Present at the Hearing:

LORD OAKSEY
LORD MORTON OF HENRYTON
LORD MACDERMOTT

[*Delivered by* LORD MACDERMOTT]

This matter comes before the Board on appeal from the judgment of the Full Court of the Supreme Court of Trinidad and Tobago (Blackall C.J., Brown and Mathieu-Perez JJ.) on a Case Stated by Hallinan J. concerning the compensation to be paid by the respondent to the appellants in respect of the compulsory acquisition of certain lands in the Island of Trinidad; and from a consequential Order by Hallinan J. dated 30th June, 1945, which gives effect to that judgment.

The manner in which the question for determination arose may be summarised as follows.

By an Agreement of the 27th March, 1941, His Majesty's Government in the United Kingdom agreed with the United States, *inter alia*, to lease to the United States land required for the establishment of naval and military bases. The United States required for the establishment of a naval base in Trinidad certain lands owned by the appellants at Pointe Gourde in that Island. Pursuant to the Agreement just mentioned the Crown, on the 22nd April, 1941, acquired those lands in the exercise of its compulsory powers. These powers and the relevant provisions for the assessment of compensation are now to be found in the Land Acquisition Ordinance, 1941, as since amended.

On part of the lands so acquired there was a large quantity of good limestone. The appellants had quarried and sold stone and lime from this part for many years prior to the acquisition. The quarry land thus worked had access to smooth water and this made for the easy transport by lighter of its products to market. In paragraphs (B), (C) and (D) of Clause 5 of the Case Stated there are certain findings regarding this quarry land which must be set out *in extenso*. They read as follows:—

> " (B) The quarry land had a special suitability or adaptability for the purpose of producing and marketing quarry products, and had a market value as quarry land prior to the date of acquisition.
>
> (C) The United States had special need of a large quantity of stone for the construction of the Naval Base at Chaguaramas, Trinidad. In addition to the special adaptability of the quarry land referred to in

the preceding paragraph, the proximity of the quarry land to the Base under construction made that land especially suited to the United States special needs.

(D) The quarry business carried on by the plaintiffs was totally extinguished by acquisition. In awarding compensation in respect of this business, the Tribunal was largely guided by the estimate it formed of the prospective profits. The Tribunal considered that the market value of the quarry land and business would be increased if the United States needs were supplied from this quarry land on a commercial basis as greater prospective profits might be expected."

The appellants' claim for compensation was heard, pursuant to the provisions of the Ordinance, by a Tribunal constituted by Hallinan J. sitting with two assessors. The total award was for $101,000. The present proceedings relate exclusively to the sum of $15,000, part of this amount, which the Tribunal allowed in respect of one particular item the nature of which is considered later in this judgment. The balance of $86,000 included the value of the quarry as a going concern and it is beyond question that this figure made due allowance for the " special suitability or adaptability " of the land for the purpose of a quarry, which is referred to in Clause 5 (B) of the Case Stated.

The award of $15,000 with which this appeal is concerned also related to the quarry land and is described by the Tribunal as being " for special adaptability ". But, despite the similarity of description, it is clear that this item was intended to be quite different and distinct from any other in the compensation allowed. It was meant to cover what is referred to in Clause 5 (C) of the Case Stated. It relates, not to the special suitability or adaptability of the land for the purpose of quarrying, which existed before acquisition, but to the special adaptability (to follow the language of the Tribunal) which the quarry land possessed after acquisition, in that its proximity to the naval base under construction made it specially suited to the special needs of the United States. As Clause 5 (D) of the Case Stated shows, the Tribunal considered it likely that these needs would have increased the quarry profits had the undertaking remained in the hands of the appellants, and the sum of $15,000 was evidently awarded as the measure of the loss of this element of prospective extra profit.

No question of amount arises. The point for determination is whether or not this $15,000 item is allowable in law as part of the compensation payable to the appellants.

Before the Tribunal this question was regarded as involving the construction of sub-section (2) of Section 11 of the Ordinance of 1941 which reads:—

" (2) The special suitability or adaptability of land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of the Government or the Government of the United Kingdom or any department of either of such Governments or any local or public authority."

Hallinan J. apparently took the view that the item under consideration fell within the opening words of this sub-section but was not excluded by its subsequent provisions, and he stated the question for the Full Court thus:—

" Whether sub-section (2) of section 11 of the Land Acquisition Ordinance, 1941, applies to the circumstances of this case so as to prevent the special adaptability of the plaintiffs' land to meet the special needs of the United States being taken into account."

The Full Court answered this question in the affirmative, disallowed the sum of $15,000 awarded for " special adaptability " and remitted the matter to Hallinan J. to be dealt with accordingly.

In its material terms Section 11 (2) of the Ordinance reproduces Section 2 (3) of the Acquisition of Land (Assessment of Compensation) Act, 1919, which, there can be little doubt, was designed to modify the effect of certain decisions of the Courts relating to the quantum of compensation in cases of compulsory purchase. Their Lordships, however, do not find it necessary to discuss the historical background of this legislation as its applicability to the somewhat peculiar situation presented by this appeal turns, in their opinion, upon the actual wording of the enactment.

It is, of course, possible that land may have a special suitability or adaptability for several purposes and, where this is so, it may well happen that Section 11 (2) will operate to exclude compensation in respect of some of such purposes and not in respect of others. But it must be assumed that the word " purpose " is used or referred to throughout the sub-section in the same sense. That being so, the expression " if that purpose is a purpose to which it could be applied only in pursuance of statutory powers " indicates, in their Lordships' view, that the word is employed in the sub-section as meaning a purpose to which *the land* can be applied. It therefore connotes a use, actual or potential, of the land itself and cannot be regarded as meaning a purpose which is only concerned with the use of the products of the land elsewhere. So, while the use of this land as a quarry manifested a " special suitability or adaptability " for a purpose within the meaning of the sub-section (which on the facts was not excluded thereby from the assessment of compensation) the use of the quarried stone in the construction of the Naval Base, though of particular importance to the United States on account of their special needs, did not, in the opinion of their Lordships, constitute in itself a " special suitability or adaptability of the land for any purpose " within the meaning of the sub-section. At most it was but a circumstance which added to the value to the United States of the use of the land as a quarry.

Their Lordships therefore consider that Section 11 (2) of the Ordinance did not apply to the item under discussion when regarded alone, as it must be in this case, and cannot therefore be said to have operated to prevent the value reflected in the award of $15,000 being taken into account.

It follows from this that the question as submitted to the Full Court should have been answered in the negative. But it does not follow that this part of the award can stand. It is well settled that compensation for the compulsory acquisition of land cannot include an increase in value which is entirely due to the scheme underlying the acquisition. As it was put by Eve J. in *South-Eastern Railway Company* v. *The London County Council* (1915) 2 Ch. 252 at 258. " Increase in value consequent on the execution of the undertaking for or in connection with which the purchase is made must be disregarded ". This rule was recognised by the Full Court and, indeed, appears to be the basis of its main conclusion, for in the course of his judgment Blackall C.J., after a reference to Lord Buckmaster's statement of the principle in *Fraser* v. *Fraserville* [1917] AC. 187 at 194, proceeds:—

> " In the present case, although a value as a quarry had admittedly been created prior to the acquisition, that value was increased by the fact that a Base was being established in the vicinity for which a large quantity of stone in a readily accessible situation was required. In other words, the value was enhanced by the scheme of the party acquiring the land, and that is not a factor for which additional compensation may properly be awarded."

On behalf of the appellants it was said that the relevant scheme in this matter was the acquisition of the quarry land and not the construction of the naval base in its vicinity.

Their Lordships are unable to accede to this argument. The Case Stated finds that the lands acquired were " required by the United States for the establishment of a naval base in Trinidad ". That being so the nature

of the scheme of this acquisition is clear and the award of $15,000 can only be related to the additional value which it gave to the quarry land.

For these reasons their Lordships consider that the Full Court was right in disallowing the item in question. This determines the substance of the matter in dispute as the appeal cannot be regarded as turning on the answer given to the question of law submitted which was, unfortunately, formulated too narrowly to raise the real issue. Their Lordships will therefore humbly advise His Majesty that the appeal should be dismissed. The appellants must pay the costs of this appeal.

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DELIVERED BY LORD MACDERMOTT

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