

Erland Blomquist

Appellant

v.

The Attorney-General of the
Commonwealth of Dominica

Respondent

FROM

THE COURT OF APPEAL OF THE EASTERN
CARIBBEAN SUPREME COURT

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE
OF THE PRIVY COUNCIL, DELIVERED THE 3RD MARCH 1987

Present at the Hearing:

LORD BRIDGE OF HARWICH
LORD TEMPLEMAN
LORD GRIFFITHS
LORD MACKAY OF CLASHFERN
LORD OLIVER OF AYLERTON

[Delivered by Lord Mackay of Clashfern]

The appellant "the landowner" was on 4th November 1971 owner of an area of land in Dominica. On that date it was acquired by the Government of Dominica "the Government". On 18th January 1983 since no compensation had by then been paid, the landowner applied to the High Court for various Orders. The application was opposed by the Attorney-General of Dominica. On 19th April 1983 Satrohan Singh J. made an order declaring that the compulsory acquisition was not carried out in accordance with the provisions of the Land Acquisition Ordinance (Cap. 170) "the Ordinance" and appointed a referee to assess the compensation payable to the landowner on the acquisition. After further procedure it was agreed that the Court itself should assess the compensation and on 9th May 1983 the same judge assessed the compensation at \$250,000 and awarded compound interest at the rate of 10% per annum on the assessed compensation from the date of acquisition to the date of payment. He also awarded the costs of the application to the landowner.

The Attorney-General appealed to the Court of Appeal of the Eastern Caribbean Supreme Court (Dominica) and the landowner cross-appealed. By a judgment dated 15th June 1984 the Court of Appeal (Robotham C.J., Bishop J.A. and Berridge Ag.J.A.) allowed the appeal by the Attorney-General insofar as it related to interest only and dismissed the landowner's cross-appeal. By order dated 22nd May 1985 the landowner was granted special leave to appeal to the Judicial Committee of the Privy Council.

The only question which was argued at the hearing before their Lordships was that of the appropriate award of interest. The landowner maintained that the judge's original award was correct whereas the Attorney-General maintained that the Court of Appeal had rightly reduced the award of interest to simple interest at 6% from the date of acquisition to the date of payment in accordance with section 21 of the Ordinance.

The present Constitution of Dominica is contained in the Schedule to the Commonwealth of Dominica Constitution Order 1978 which came into operation on 3rd November 1978. Section 1 in chapter 1 of the Constitution provides:-

"Whereas every person in Dominica is entitled to the fundamental rights and freedoms, that is to say, the right, whatever his race, place of origins, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely -

- (a) ...
- (b) ...
- (c) protection for the privacy of his home and other property and from deprivation of property without compensation,

the provisions of this chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the public interest."

The relevant provision dealing with the protection from deprivation of property without compensation is section 6 which so far as relevant is in these terms:-

"6.(1) 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 where provision is made by a law applicable to that taking of possession or acquisition for the payment, within a reasonable time, of adequate compensation.

(?) Every person having an interest in or right over property that is compulsorily taken possession of or whose interest in or right over any property is compulsorily acquired shall have a right of direct access to the High Court for -

(a) determining the nature and extent of that interest or right;

(b) determining whether that taking of possession or acquisition was duly carried out in accordance with a law authorising the taking of possession or acquisition;

(c) determining what compensation he is entitled to under the law applicable to that taking of possession or acquisition;

(d) obtaining that compensation:

Provided that if Parliament so provides in relation to any matter referred to in paragraph (a) or (c) of this subsection the right of access shall be by way of appeal (exercisable as of right at the instance of the person having the interest in or right over the property) from a tribunal or authority, other than the High Court, having jurisdiction under any law to determine that matter."

There follows a provision empowering the Chief Justice to make rules with respect to the practice and procedure of the High Court in relation to the jurisdiction conferred on the High Court by subsection 2 of the section but no rules have been made under this power. Section 16 of the Constitution provides:-

"16.(1) If any person alleges that any of the provisions of sections 2 to 15 (inclusive) of this Constitution has been, is being or is likely to be contravened in relation to him ... then, without prejudice to any other action with respect to the same

matter which is lawfully available, that person ... may apply to the High Court for redress.

(2) The High Court shall have original jurisdiction -

(a) to hear and determine any application made by any person in pursuance of subsection (1) of this section; ...

and may make such declarations and orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of section 2 to 15 (inclusive) of this Constitution:

Provided that the High Court may decline to exercise its powers under this subsection if it is satisfied that adequate means of redress for the contravention alleged are or have been available to the person concerned under any other law."

Paragraph 12 of Schedule 2 to the Order enacting the Constitution provides:-

"Nothing in section 6 of the Constitution shall affect the operation of any law in force immediately before 1 March 1967 ..."

1st March 1967 was the date on which the previous Constitution repealed by this Constitution had come into force. Section 6(1) of the 1967 Constitution is in the same terms as section 6(1) of the 1978 Constitution. Section 6(8) of the 1967 Constitution provides:-

"Nothing in this section shall affect the operation of any law in force immediately before the coming into operation of this Constitution ..."

Amongst the laws in force on 1st March 1967 was the Ordinance which was originally enacted on 3rd June 1946. In view of the provisions in the Constitutions to which their Lordships have referred nothing in section 6 of either Constitution affects the operation of the Ordinance.

Section 3 of the Ordinance provides that if the Administrator in Council considers that any land should be acquired for a public purpose he may cause a declaration to that effect to be made in the manner provided by section 3 and the declaration shall be conclusive evidence that the land to which it relates

is required for a public purpose. Section 3(2) provides that the declaration should specify among other things "the approximate area of the land" and "in cases where a plan has been prepared, the place where and the time when, a plan of the land can be inspected". Section 7 of the Ordinance requires that after land has been compulsorily acquired a notice of acquisition containing, *inter alia*, the said particulars should be served on every person known or believed to be entitled to compensation in respect of the acquisition. The declaration that the landowner's land was to be acquired for a public purpose and the notice served on the landowner in connection therewith referred to 86.37 acres of land having been acquired, whereas the true amount of land acquired was 98 acres. Further, although the notice of acquisition referred to a plan, there was no indication of where or when the plan could be inspected.

By section 6(1) of the Ordinance "as soon as any declaration has been published ... the authorised officer shall, without delay, enter into negotiations ... for the purchase of the land to which the declaration relates upon reasonable terms and conditions and by voluntary agreement with the owner of the land". The affidavit evidence of the landowner, which was not challenged as to the facts therein, disclosed that between the date of acquisition and January 1973 the landowner made many unsuccessful attempts to have proper negotiations with the authorised officer to determine compensation to be paid to him. Section 12(1) provided that:-

"As soon as it becomes necessary to do so the Administrator shall cause a board of assessment ... to be appointed."

Between January 1973 and August 1975 the landowner frequently requested in writing that his claim for compensation be submitted to arbitration. It was not until August 1975 that a board of assessment was appointed. Section 13(1) of the Ordinance required that:-

"Upon the appointment of a board ... the authorised officer shall forward to the chairman ... (f) a copy of the report required by this section."

In the report the authorised officer was required to give his opinion, *inter alia*, upon the value of the land for the purposes of compensation under the Ordinance. The authorised officer's report was not prepared until 23rd December 1977. In December 1977 when the board of assessment had not begun its deliberations the landowner's nominee on the Board wrote to the Government drawing attention to the fact that the matter had been long outstanding and

suggesting the appointment of another chairman. The board of assessment duly began its deliberations but they were never concluded. In September 1982 the landowner was requested to appoint a nominee to another board of assessment which was to be set up shortly thereafter but the landowner decided to institute the proceedings out of which this appeal arises. No board of assessment made any determination nor award of compensation.

Section 21 of the Ordinance provides:-

"The board, in awarding compensation, may add thereto interest at the rate of six per cent per annum, 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."

Before the judge the landowner relied upon a decision of the Court of Appeal of Grenada in *Grand Anse Estates Ltd. v. His Excellency Sir Leo Victor De Gale et al* Appeal No. 3 of 1976 in which St. Bernard J.A. expressed the opinion that the 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 might be and that in spite of the terms of section 19 of the applicable legislation in Grenada a landowner was entitled to interest at such rate that would compensate him for any loss occasioned to him from the date of the acquisition. The judge, having found that section 21 of the Dominica Ordinance was only binding or mandatory if the compensation for the acquired property was being paid within a reasonable time, concluded that since the landowner was not compensated for this compulsory acquisition within a reasonable time to restrict the interest to 6% per annum simple interest would be repugnant to and in conflict with the provisions of section 6(1) of the Constitution requiring adequate compensation to be given. He accordingly awarded compound interest at the rate of 10%.

The Court of Appeal took the view that by awarding 10% compound interest the judge had gone outside the scope of the Ordinance and for that reason substituted for the judge's award of interest, simple interest at 6% allowed by the Ordinance.

In support of the submission that the judge's order with regard to interest should be restored, counsel for the landowner submitted that the judge was not bound by section 21 of the Ordinance but was entitled by virtue of the powers conferred upon him by section 16 of the 1978 Constitution to grant redress to the landowner for the infringement of the landowner's fundamental right under section 6 of the

Constitution. Where such an infringement exists, the landowner submitted he was entitled to the remedies provided under section 6(2) of the Constitution but was not restricted to these since section 16, and the power conferred by it upon the High Court to give redress, was available for use in appropriate circumstances to provide remedies over and above those specifically mentioned in section 6(2).

Counsel for the Attorney-General did not dispute that the landowner was entitled to apply to the High Court pursuant to section 16 of the Constitution and that the High Court was entitled to find that the compulsory acquisition of the land was not in accordance with the Ordinance. He went on to submit that the protection from deprivation of property without compensation provided by the Constitution of Dominica in accordance with section 1 was that afforded by section 6; that section 6 prevented compulsory acquisition except where provision is made by a law applicable to that acquisition for the payment within a reasonable time of adequate compensation; that the Ordinance was a law applicable to this acquisition providing for the payment within a reasonable time of adequate compensation; and that accordingly, the only right which the Constitution gave the landowner in the circumstances was that the acquisition should be duly carried out in accordance with the Ordinance and that accordingly, the landowner's only remedy for delay in payment was interest in accordance with the provisions of section 21 of the Ordinance.

Their Lordships consider that the submission for the Attorney-General is right. The decision of the Court of Appeal of Grenada in *Grand Anse* already referred to was given in accordance with the Constitution of Grenada which provided that an existing law was to be construed from the commencement of the Constitution with such modifications, adaptations, qualifications and exceptions as may be necessary to bring it into conformity with the Constitution. There was no provision to the same effect as section 6(8) of the 1967 Constitution of Dominica nor paragraph 12 of the Schedule to the 1978 Constitution of Dominica. The Court of Appeal of Grenada were accordingly bound to give effect to a constitutional provision which had the effect of overriding any provision in an existing law which called for something less than full compensation.

Since the operation of the Ordinance in Dominica is not to be affected by the constitutional provisions protecting the people of Dominica from deprivation of property without compensation the approach taken in Grenada is not open in Dominica. Where, as in this case, there was a law in existence in Dominica at the

date of the acquisition of the land which authorised its acquisition there was in their Lordships' opinion a law applicable to that acquisition within the meaning of section 6 of the Constitution. It did not cease to be applicable to the acquisition when the timetable implied in its provisions for the assessment of compensation was not promptly carried out. This delay however did have the effect that the acquisition was not duly carried out in accordance with the law authorising the acquisition. There was accordingly a breach of the landowner's constitutional right conferred by section 6 entitling him to the determination which he obtained from the judge that the acquisition had not been duly carried out in accordance with the Ordinance and entitling him to the remedy conferred by section 16 of redress.

In their Lordships' view redress in section 16 does not have the wide meaning contended for by counsel for the landowner. That meaning if applied would empower the High Court not only to award interest on a different basis from that specified in the applicable law but would put the question of the compensation for the acquisition also at large unrestricted by the provisions of the applicable law. In their Lordships' opinion the word "redress" in section 16(1) is used to introduce the specific powers described in section 16(2) namely "to make such declarations and orders, issue such writs and give such directions as" the Court "may consider appropriate for the purpose of enforcing or securing the enforcement of any of the provisions of sections 2 to 15 (inclusive) of this Constitution". When this more detailed provision is applied to the circumstances of the present case it empowers the Court to take such steps as it may consider appropriate for the purpose of enforcing or securing the enforcement of the provision of section 6. The acquiring authority, in this case the Government, is bound to carry out the acquisition in accordance with the provisions of the Ordinance. In this case since no compensation had been assessed at the date of application to the High Court this involved taking the steps necessary to secure that compensation was assessed and awarded on the basis appropriate to the Ordinance.

There is nothing in section 16 properly construed which, in their Lordships' opinion, would entitle the Court to make an award of damages, in the form of increased interest or otherwise, in respect of infringements of the landowner's constitutional rights under section 6 which consisted in delay in the assessment and payment of compensation in accordance with the Ordinance where no tort, breach of contract or other cause of action giving right to damages existed. This conclusion is strongly supported by the terms of section 6(2)(c) which

provide that the access to the High Court under that sub-section is for determining what compensation the landowner is entitled to under the law applicable to that acquisition. On the landowner's argument in the present case as has already been pointed out section 16 would entitle the Court to use a different basis altogether. It cannot have been the intention of the legislature in framing the Constitution that entirely different bases of assessment of compensation would be available according to whether section 6(2)(c) or section 16(1) was being used as the basis for the intervention of the High Court. Even if the interest to be awarded on compensation is regarded as something distinct from the compensation itself there is nothing in section 16 which confers power upon the Court to award interest other than that provided by section 21 of the Ordinance and no other power of the High Court was founded upon in argument which would entitle the Court to make any other order with respect to interest.

The respondent did not seek an order against the landowner for costs of the hearing before this Board and accordingly their Lordships dismiss this appeal and affirm the order of the Court of Appeal of Dominica of 15th June 1984.

