

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

CLAIM NO: ANUHCV 2007/0745

BETWEEN:

MORRIS GARDNER

Claimant

and

THE ATTORNEY GENERAL

Defendant

Appearances:

Ms. Laurie Freeland-Roberts for the Claimant
Mr. Justin Simon, Q.C. and Ms. Alicia Aska for the Defendant

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2010: October 6
December 21
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JUDGMENT

[1] **MICHEL, J.:** By fixed date claim form (with affidavit in support) filed on 31st December 2007 the Claimant, Morris Gardner, instituted proceedings against the Chief Lands Officer, the Minister for Agriculture, Lands and Fisheries and the Attorney General of Antigua and Barbuda, seeking a declaration of possession or, alternatively, an order for specific performance, damages, interest, costs and further or other relief arising from the compulsory acquisition by the Crown of a portion of land at Parham owned by the Claimant. There was also a further affidavit by the Claimant filed on 25th April 2008 and a

supporting affidavit filed by George Duberry (a former Chief Lands Officer and Authorized Officer) on 30th September 2009.

[2] The defence of the Defendants came in the form of affidavits in reply filed by Lesroy Samuel (the Chief Valuation Officer) on 10th April 2008, Daryll Matthew (the Chief Lands Officer) on 11th April 2008 and David Matthias (the Land Authorized Officer) on 20th November 2009.

[3] Following mediation, case management and pre-trial review, the case came to trial on 6th October 2010, when – upon application by the Attorney General – the Chief Lands Officer and the Minister for Agriculture, Lands and Fisheries were removed as parties to the proceedings, leaving the Attorney General as the sole Defendant.

[4] At the trial, the Claimant gave evidence on his own behalf and called George Duberry as his witness, while Lesroy Samuel and David Matthias gave evidence on behalf of the Defendant.

[5] The undisputed evidence in the case - as it came from the affidavits of the witnesses (deemed as the evidence in chief of their deponents) and their evidence given in the witness box – can be summarised as follows:

(a) The Claimant was the owner of a portion of land at Parham measuring between 0.1 and 0.15 acres (with buildings thereon) registered in the Land Registry as Registration Section: Crabbs Peninsular & Neighbouring Islands, Block Number: 21 2591C, Parcel Number: 13, which was occupied by the Crown from about January 2000 for the purpose of the development of a fisheries complex in Parham.

(b) Between 2000 and 2003 discussions/negotiations were held between the Claimant and representatives of the Crown, in particular, Mr. George Duberry, who was at the time the Chief Lands Officer and the Authorized Officer within the Ministry of Agriculture, Lands and Fisheries, concerning the acquisition of the Claimant's aforesaid property and payment therefore.

- (c) A meeting was held on 14th June 2003 among the Minister for Agriculture, Lands and Fisheries, the Chief Lands Officer and the Claimant, which meeting arrived at an agreed settlement package to compensate the Claimant in full for his aforesaid property by making available to him two acres of land at Willoughby Bay and one acre of land at Parham Hill, and this agreement was confirmed in a letter to the Claimant dated 17th June 2003 signed by Mr. Duberry (as Authorized Officer) and approved by Mr. Vere Bird Jr. (as Minister for Agriculture, Lands and Fisheries).
- (d) By December 2007 the two acres of land at Willoughby Bay and the one acre of land at Parham Hill were not made available to the Claimant and so he instituted these proceedings.
- (e) The formal acquisition of the Claimant's land by the Crown took place in October 2008 when a second declaration of acquisition was published in an ordinary issue of the Antigua and Barbuda Official Gazette on 9th October 2008 following a first publication on 2nd October 2008.

[6] Inasmuch as this remedy might have been available to the Claimant up until the filing of this case on 31st December 2007, having regard to the undisputed evidence that the Claimant's property which is the subject matter of this case was formally acquired by the Crown as of October 2008, the declaration sought by the Claimant in his fixed date claim that he is entitled to possession of the property is accordingly declined. The effect of section 3 (3) of **the Land Acquisition Act**¹ is to vest the land absolutely in the Crown upon the second publication of the declaration in the Gazette.

[7] Alternatively to the declaration sought by the Claimant was an order for specific performance against the Defendant. But, remembering that there is now a single Defendant, who is the Attorney General as the representative of the Crown, the remedy of specific performance is not available to the Claimant, by virtue of section 16 (1) (a) of **the Crown Proceedings Act**².

¹ Cap. 233 of the 1992 Revised Laws of Antigua and Barbuda

² Cap. 121 of the 1992 Revised Laws of Antigua and Barbuda

- [8] The question then becomes whether the Claimant, although not being entitled to the remedy of specific performance against the Defendant, is nonetheless entitled to compensation for his land as per the "agreed settlement package" outlined in Mr. Duberry's letter of 17th June 2003, a declaratory order on which can be made by the Court pursuant to section 16 (1) (a) of **the Crown Proceedings Act**.
- [9] Whether alternatively or additionally, the Claimant claimed the sum of \$104,500 as the value of the land acquired by the Crown. This figure is the product of a valuation of the Claimant's land dated 4th December 2007. The Claimant is entitled to compensation for the land compulsorily acquired from him by the Crown and if his valuation yields a value of \$104,500 (which although higher than is not out of sync with the valuation undertaken by the Defendant) then he is entitled to that sum, less any payment already made to him in respect of the land, plus interest and costs.
- [10] Unfortunately, the Court does not have the benefit of a valuation of the buildings which were on the Claimant's land and which had ceased to exist by the time that the valuations of the land were done (by the Claimant) in December 2007 and (by the Defendant) in March 2008. What came out in the evidence about the buildings is that they were made of stone, with wooden roofs and they were old and not being used; one was a complete building and the other was dilapidated. But, in response to a question by the Court, Mr. Duberry testified that although he does not recall what his assessment of the value of the buildings was, their value was in the range of a couple of hundreds of thousands of dollars.
- [11] The next item of relief sought by the Claimant in his fixed date claim is not as comprehensible as the previous ones which he claimed. Having already claimed the value of the land acquired as compensation for its acquisition, the Claimant then claimed damages for illegal acquisition of the aforesaid land and for loss of opportunity in the amount of \$1,977,032.
- [12] There is no evidence that the land which is the subject matter of this case was illegally acquired by Government. The process of acquisition may have been lethargic, with nearly

nine years elapsing between the commencement and the completion of the acquisition process, and the Crown may have long since taken over the property and built its fisheries facility on it, but there is nothing to say that the property was illegally acquired by the Crown.

- [13] As to the Claimant's claim for loss of opportunity, any loss of opportunity arising from the acquisition of the land by the Crown would have to be compensated in the value paid for the land, because when the land would have been acquired from the Claimant he would by necessity have lost the use of the land, including the opportunity to use it for any particular purpose, which loss would have to be catered for in the valuation of the land. The Court could not therefore order that the Claimant be paid the value of his land and then be paid as well for the loss of use or loss of opportunity to use the aforesaid land.
- [14] The case comes down to this – the Claimant's property having been compulsorily acquired by the Crown, should the Claimant be compensated by (1) the implementation of the agreement outlined in the letter of 17th June 2003, (2) the payment to the Claimant of the sum of \$104,500, plus interest and costs, plus compensation for the value of the buildings on the Claimant's land existing at the time of the Crown's take over or (3) the appointment of a Board of Assessment to assess the compensation to which the Claimant is entitled for the compulsory acquisition of his property by the Crown.
- [15] Of the three options open to the Court, the third option is jettisoned on the basis that it does not bring finality to the proceedings commenced three years ago in respect of land acquired de facto by the Crown some ten years ago. The second option is also jettisoned because, apart from the sufficiency of the valuation of the land being put into question by the Claimant's additional claim for loss of opportunity, the valuation also failed to address the issue of compensation payable to the Claimant for the buildings which were on the land at the time it was taken over by the Crown and which might have been broken down as far back as ten years ago without ever having been valued. Although the first option was attacked by the Defendant as involving an agreement entered into ultra vires by Mr. George Duberry, the Court is not convinced that Mr. Duberry acted beyond his powers as

Chief Lands Officer and Authorized Officer within the Ministry of Agriculture, Lands and Fisheries when he negotiated the aforesaid agreement with the Claimant and the Court is prepared to sanction the agreement negotiated by the appropriate official of the Crown and approved (in writing) by the relevant Minister of Government.

[16] The Order of the Court in this case is as follows –

Upon the repayment by the Claimant to the Crown of the sum of \$85,000 paid to the Claimant in part settlement of the compensation to which he is entitled for the compulsory acquisition by the Crown of his property at Parham, the Crown shall transfer to the Claimant two acres of land at Willoughby Bay registered in the Land Registry as Block Number 32 2884A, Parcel Number 318 and one acre of land at Parham Hill registered as Block Number 13 2490B, Parcel Number 353. The Claimant is also entitled to his costs for these proceedings to be agreed or otherwise assessed.

[17] The following authorities were cited by the parties and considered by the Court in its deliberation:

- (a) **The Land Acquisition Act¹** ;
- (b) **The Crown Proceedings Act 2²**;
- (c) **Sir William Wade's Administrative Law³**;
- (d) **Smith v Hughes⁴**;
- (e) **Guiana Island Farms Limited v The Minister of Finance et al⁵**;
- (f) **Birmingham Corporation v West Midland Baptist (Trust) Association (Inc.)⁶**;
- (g) **Anisminic Ltd. v Foreign Compensation Commission et al⁷**;
- (h) **San Jose Farmers' Co-operative Society Ltd. v Attorney General⁸**;

³ Oxford University Press, Ninth Edition

⁴ (1861-1873) All E.R. Rep. 632


⁵ ANUHCV 2004/0389

⁶ [1970] A.C. 874

⁷ [1969] 2 A.C. 147

⁸ (1991) 43 WIR 63

- (i) **Kendall Samuels v Attorney General et al⁹**;
- (j) **The Attorney General of Anguilla et al v Bernice Lake, Q.C. et al¹⁰**.



Mario Michel
High Court Judge

⁹ ANUHCV 2009/0590

¹⁰ Anguilla Civil Appeal No. 4 of 2004