

Blakes Estate Limited

Appellant

v.

The Government of Montserrat

Respondent

FROM

THE COURT OF APPEAL OF MONTSERRAT

JUDGMENT OF THE LORDS OF THE JUDICIAL
COMMITTEE OF THE PRIVY COUNCIL,

Delivered the 15th December 2005

Present at the hearing:-

Lord Nicholls of Birkenhead
Lord Hoffmann
Lord Rodger of Earlsferry
Lord Walker of Gestingthorpe
Lord Carswell

[Delivered by Lord Carswell]

1. In 1995 a devastating volcanic eruption caused massive damage on the island of Montserrat. The capital city of Plymouth was virtually destroyed and a large proportion of the island in the southern part, amounting to almost two-thirds of the whole, became unsafe for habitation. Thousands of inhabitants had to leave their homes and a very large problem of resettlement arose. The respondent government embarked on a policy of compulsory land acquisition to provide housing and associated amenities for people who had had to move from the unsafe area.

2. The respondent compulsorily acquired for this purpose two adjoining tracts of land owned by the appellant. The area known as Lookout One, comprising 92.4 acres, was acquired on 24 December 1997 and Lookout Two,

comprising 102.4 acres, was acquired on 30 December 1998. A small area of some three acres had previously been acquired by agreement for construction of a school, the price for which was negotiated at \$2.00 per square foot (all sums mentioned in this judgment are expressed in EC dollars).

3. It was accepted that the Lookout lands were well suited for development for the purpose of resettlement. The area was described as "a place of breathtaking beauty", with sweeping views and the benefit of cool breezes. Not all of it was capable of straightforward development, since a significant part of each site had steep contours. In paragraphs 8 and 9 of the judgment of Georges JA (Ag) in the Court of Appeal, with which the other members (Byron CJ and Redhead JA) concurred, he adopted the description of the lands given by Mr Martin Van Oppen, one of the valuation experts who gave evidence before the Board of Assessment, in the following terms:

"[8] Mr Martin Van Oppen a Valuation expert following an inspection in August 1997 described Lookout One thus:

'... the site comprised an area of rough undulating grazing land with steeper scrub-covered slopes. Cat and Brimms ghauts form natural boundaries to the south-east and northern sides of the site. The soil appeared thin and was part-covered with scrub trees bare rock and strewn with boulders. There were signs of the presence of goats but (apart from some cattle referred to below) no other agricultural or forestry activity appeared to have been carried out on the site for many years. A small herd of cattle which I was given to understand had recently been evacuated from the volcanic danger zone in the south were grazing the site and at the time of inspection a post and barbed wire fence was being erected to contain them. There were no services within the site. Water and electricity was available at the road running alongside the extreme southern boundary and a

connection had been made to the newly acquired school site. Apart from a rough tract to the school site, there were no internal roads or tracks suitable for vehicular use.'

[9] And his description of Lookout Two after an inspection in November 1998 reads:

'Lookout Two is located to the north-east of and contiguous to the Lookout One site. This parcel of land comprises an area of 102.47 acres or thereabouts. When inspected in November 1998 it was noted that this site comprised a somewhat similar terrain to that of the Lookout One site excepting that the land falls away gently to the ocean with a cliff forming its natural coastal boundary. Cat and Brimms ghauts form natural boundaries to the south-east and northern side of the site. This site contains a larger percentage of steep land than Lookout One. Access was via a recently constructed road put in by the acquiring body to service the Lookout One development. But for the acquiring body's adjacent development, this site must be considered somewhat remote from the main centres of population.'"

4. The respondent offered \$3.3 million for Lookout One and \$1.5 million for Lookout Two, a total of \$4.8 million. The offer was refused by the appellant, which had claimed a very substantially larger sum of compensation. The matter went for decision to a Board of Assessment ("the Board") appointed under the Montserrat Land Acquisition Act, the members of which were Mr Justice Saunders (chairman), a practising valuer Mr Fred Campbell, nominated by the appellant, and Mr Rex McKay SC, appointed by the respondent. The appellant contended before the Board that the total value of the two areas of land in Lookout One and Lookout Two fell between \$16,910,235.00 and \$31,378,040.00. In a written decision given

on 7 November 2000 the Board by a majority made a total award of \$5,908,100.00 and ordered that the respondent pay 65 per cent of the appellant's costs.

5. The appellant appealed to the Court of Appeal of Montserrat (Byron CJ, Redhead JA and Georges JA (Ag)), advancing some twelve grounds of appeal, which were dealt with seriatim in the court's judgment given on 3 April 2003. The respondent cross-appealed on the issue of the valuation of commercial land and the award of costs. The court rejected most of the grounds of the appeal, but the appellant succeeded on ground 8, relating to very steep land on both sites, 11(a), relating to road reserves, and 11(c), relating to the school site. On these issues the Court of Appeal remitted the assessment to the Board for reconsideration. It allowed the cross-appeal on the value of commercial land, which it also remitted to the Board for reassessment. On the issue of costs it varied the Board's decision, ordering that each party should pay its own costs of the proceedings before the Board, and made the same order in respect of the costs in the Court of Appeal. The appellant appealed to the Privy Council against the decision of the Court of Appeal. The respondent has not cross-appealed and accordingly the remittal to the Board on grounds 8 and 11 is not affected by the present appeal and will proceed in due course.

6. The method of assessment of compensation for compulsory acquisition was prescribed by section 19 of the Land Acquisition Act (sometimes referred to as "the Ordinance") in the following terms, most of which represent familiar principles of valuation in such cases:

"19. Subject to the provisions of this Act, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land -

(a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if

sold in the open market by a willing seller, might have been expected to have realized at a date twelve months prior to the date of the second publication in the *Gazette* of the declaration under section 3:

Provided that 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 other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land;

- (b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land 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 any Government department;
- (c) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to public health, the amount of that increase shall not be taken into account;
- (d) where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the Board is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on

the basis of the reasonable cost of equivalent reinstatement;

(e) no allowance shall be made on account of -

(i) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;

(ii) any disinclination of the person interested to part with the land acquired;

(iii) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action;

(iv) any damage, not being in the nature of deprivation of or interference with an easement, servitude or legal right, which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put:

Provided that nothing herein shall prejudice any claim under this Act for damage subsequently sustained in consequence of the use to which the land acquired is put;

(v) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put;

(vi) any outlay or improvement of such land which has been made, commenced or effected within twelve months before the publication of the declaration under section 3, with the intention of enhancing the compensation to be awarded

therefor in the event of such land being acquired for public purposes."

The parties agreed before the hearing before the Board that the value of the lands should be assessed as at the date of acquisition of each property instead of twelve months before the acquisition. It was not in dispute that the values at the two dates in each case would have been "much the same" and the Court of Appeal found (para 20) that neither party was prejudiced by the arrangement. Notwithstanding this agreement, the appellant contended before the Court of Appeal that for the Board to depart from the statutorily prescribed date in valuing the lands was an error of law which invalidated the award. The Court of Appeal rejected this contention, which the appellant repeated in its grounds of appeal to the Privy Council. At the outset of the hearing, however, Mr Newman QC, leading counsel for the appellant, formally abandoned this ground.

7. In valuing the lands the valuers and the Board were faced with the question of what value to place upon large tracts of land being notionally sold off in one piece rather than in small lots for which comparisons were more readily available. They had to take account of the two distinct elements of value of such lands, existing use value and prospective development value, sometimes referred to as "hope value". The Board concluded (para 15 of its decision) that it should adopt the residual method of valuation as the basis for arriving at the market value of the lands acquired, while stating that it had not ignored comparisons of land transactions in Montserrat during the relevant period. It described the residual method in paragraph 16 in the following terms:

"The method of valuation accepted by the Board was the one used by Mr Van Oppen, a witness for the Respondent. In their Closing Arguments, Counsel for the Claimant intimated that they had no quarrel with Mr Van Oppen's method. This method requires one to ascertain the net

value of the lands by first engaging in a hypothetical sub-division of the land and then to calculate the gross sum capable of realisation from the sale of the sections therein. From the resulting sum is deducted such expenses as the infrastructure costs, professional fees, finance charges and other such allowances as well as the expenses related to the acquisition. See *Carlton Heights Ltd v Min. of Works* [1963] NZLR 366 and *Marshall v Minister of Works* [1950] NZLR 339."

In *Cripps, Compulsory Acquisition of Land*, 11th ed (1962) it is stated that the residual method will not be applied where the open market value is otherwise ascertainable. Where it is invoked, it is described (para 4-200) as being -

"broadly a valuation based on a hypothetical development of the site by rebuilding of existing buildings, or from a cleared site with appropriate allowance for the cost of development, and other matters, and valuing on rents of comparable properties with allowances for the time taken in development and postponement of enjoyment of returns from the property."

It was not disputed on appeal before their Lordships that the residual method was an appropriate one to adopt for valuation of the subject lands.

8. The Board went on to weigh up the testimony of the expert witnesses, which it properly regarded as critical to determining its award. It stated at paragraph 19:

"Having seen and heard the witnesses, the Board preferred the evidence of the Respondent's witnesses. In particular, the testimony of Mr Burke commended itself to us. We considered it to be objective and fair."

In paragraph 30 the Board set out Mr Burke's qualifications as a chartered surveyor and former Chief Surveyor and Valuation Officer

in Montserrat, with wide experience in land development in Montserrat. In paragraph 42 it discussed Mr Van Oppen's evidence:

"The witness who testified for the Respondent on the values that ought to be placed on the land was Mr Martin van Oppen. This witness is a Fellow of the Royal Institution of Chartered Surveyors. His evidence was given in a clear and succinct manner and, as stated before, his valuation was largely premised upon the residual method of valuation."

It went on in paragraph 43:

"The Board accepted Mr Van Oppen's methodology. To a great extent, his figures were also supported by a fair examination of comparable land transactions that have taken place in Montserrat for residential and commercial lots. However where there was a difference between Mr Van Oppen and Mr Burke, in the figures presented for land values, a majority on the Board felt it safer to rely on Mr Burke's figures. We naturally expect that Mr Burke would have a more intimate knowledge of what obtains on the ground in practice. Save that Mr Campbell has reservations about the value of commercial land at Lookout 1, the Board has therefore used Mr Burke's figures in computing the value of the lands zoned by him in his hypothetical sub-division for residential and commercial activity."

9. The Board came to the conclusion that the lands should be zoned for valuation purposes as follows:

Lookout One

| | |
|-------------------------|-------------|
| Housing | 54.77 acres |
| Commercial | 5.78 |
| Recreational | 1.17 |
| Agricultural | 13.85 |
| Very steep land | 7.75 |
| Roads and road reserves | <u>9.08</u> |
| TOTAL | 92.40 acres |

Lookout Two

| | |
|-------------------------|--------------|
| Housing | 45.73 acres |
| Agricultural | 40.15 |
| Very steep land | 10.36 |
| Roads and road reserves | 5.31 |
| Commercial | <u>0.92</u> |
| TOTAL | 102.47 acres |

In making the final valuation the acreage set aside for housing was further broken down into different slope categories.

10. When it came to assessing the infrastructure costs the Board found much of the evidence adduced on the issue of little assistance. It eventually held (para 39) that "the only reasonable thing to do" would be to fix the mean of the rough range estimated by Mr Burke. It accordingly fixed the figure of \$1.60 per square foot as the cost of infrastructure of the developable land in Lookout One. It determined the cost for Lookout Two to be \$1.75 per square foot, because of the greater steepness of the lands (para 41). The Board rejected the appellant's contention that the lands should be valued without deducting the infrastructure costs, an issue which will be discussed later in this judgment.

11. The Board then made a calculation of the compensation in the final part of its award. It assigned different values to different portions of the land notionally allocated for housing, on the ground that the price would vary according to the steepness of the portions. It placed a value on the commercial land of \$10.00 per square foot for each area, then deducted the cost of infrastructure in relation to the developable lands (ie excluding agricultural and very steep lands) and the fees, finance charges and developer's profit (para 53). The final award was \$3,846,700 in respect of Lookout One and \$2,059,400 in respect of Lookout Two, to which was added the sum of \$2,000 for injurious affection.

12. The Court of Appeal upheld the Board's conclusions about the quantum of

compensation, with the three exceptions mentioned in para 5 above. As the remittal on grounds 8 and 11 in the appellant's notice of appeal to the Court of Appeal is not the subject of appeal to the Privy Council it is not necessary to enter into any further discussion of these questions. The Court of Appeal remitted the valuation of the commercial land to the Board for reassessment. Its reasons were set out in paragraph 50 of the judgment of Georges JA (Ag):

"As regards Ground 1 it would undoubtedly be true to say that there appears to be no basis on which the value of \$10.00 per square foot in respect of commercial land was arrived at by the Board. I note that Mr Fred Campbell in his dissenting award placed a value of \$7.50 per square foot on the same quality of land. It is also noted there is appreciably more available commercial land in Lookout One than in Lookout Two. As a statutory tribunal it is felt that the Board is obliged to give adequate and cogent reasons for its decisions otherwise they may be viewed as being arbitrary and unfair and not in keeping with the provisions of section 19 of the Ordinance."

13. The appellant's argument before their Lordships was based on six main grounds, of which the first was abandoned. The remaining five were set out in its printed case as follows:

"(ii) That the Court of Appeal erred in its finding that the Board of Assessment did make a valuation based on the residual method of valuation after taking into account comparison of land transactions in Montserrat during the relevant period.

(iii) That the Court of Appeal erred in concluding that the Board of Assessment correctly applied the residual method of valuation notwithstanding the assessed value of the land was grossly below the

rates at which land was currently sold on the open market.

- (iv) That the Court of Appeal erred in upholding the Board of Assessment computation of the infrastructure costs as regards any proposed development of the acquired land by the Respondent.
- (v) That the Court of Appeal erred in concluding that there was no evidential basis upon which the Board of Assessment made a finding that the value of the commercial land was \$10 per square foot and accordingly remitted the matter to the Board for review.
- (vi) That the Court of Appeal erred in wrongly deciding that the Board of Assessment award being woefully short of the amounts claimed by the Appellant, had the Appellant been more reasonable in its approach the litigation which ensued may have been unnecessary, and consequently disentitling the Appellant to the costs awarded or any costs."

14. Mr Newman dealt with grounds (ii) to (iv) compendiously in presenting his submissions. Much of his argument was directed to the validity of the Board's estimates on different issues in the light of the evidence before it. Their Lordships must point out that these are factual conclusions, which have been accepted by the Court of Appeal. In accordance with the practice authoritatively summarised in *Devi v Roy* [1946] AC 508 the Privy Council will decline to review the evidence for a third time when there are concurrent judgments of two courts on a pure question of fact, unless there is some miscarriage of justice or violation of some principle of law or procedure: cf also *Chua Chee Chor v Chua Kim Yong* [1962] 1 WLR 1464. No such miscarriage or violation has been established, and accordingly their Lordships will not, without some reason to justify departure from the practice, entertain

submissions about the quantum of the estimates of value or such matters as the practice of valuers in Montserrat relating to the deduction of survey fees or the valuation of sloping lands.

15. Mr Newman sought to introduce a factor which would permit him to challenge the general validity of the Board's estimates by a submission about the basis on which Mr Burke approached his task of valuation. He cited the introductory paragraph of a document prepared by Mr Burke, entitled "Final Report" and addressed to the Chief Physical Planner of the Government of Montserrat, in which he stated:

"The proposed development is intended to produce a housing lot subdivision plan consistent with what the private investor would put forward in order to obtain maximum profit."

Counsel submitted that the meaning to be taken from this passage was that Mr Burke carried out his valuation in such a way as to give maximum profit and advantage to the Government as compulsory purchaser, at the expense of the appellant as compulsory vendor, and that in consequence his evidence was vitiated and should not have been relied on by the Board. Their Lordships do not consider that such a meaning is to be taken from the passage. In their opinion it was intended to convey that the hypothetical developer who is supposed to be in the market for the lands would make the most profitable use of them rather than adopting a less profitable lay-out. Contrary to Mr Newman's argument, this approach tended to maximise the value of the lands and so the amount of the compensation to be paid to the appellant.

Their Lordships accordingly must reject this argument and with it the suggestion that there is any factor which should militate against their following the regular practice in relation to concurrent findings of fact. It was not in dispute that the residual method was an appropriate method of valuation, since all the comparisons were with transactions concerning much smaller portions of land. In their Lordships' view

the Board took such account as it could of other transactions in reaching its conclusions on the value of the different areas of the lands acquired. The Board's estimate of infrastructure costs was based on the best estimate it could make, in the absence of more germane evidence from either party, a situation not infrequently encountered by courts and tribunals. In their Lordships' view it had material upon which it was entitled to reach its conclusions about the cost of infrastructure and they should not be upset. Grounds (ii) to (iv) of the appellant's argument therefore fail.

16. Their Lordships then turn to the cross-appeal relating to the value attributed by the Board to the commercial land. In paragraph 50 of the judgment the Court of Appeal held that "there appears no basis on which the value of \$10.00 per square foot in respect of commercial land was arrived at by the Board". It must be pointed out, however, that in Mr Burke's written statement, which was in evidence before the Board of Assessment, he stated (Record, vol 1A, p 261) "Commercial lots could be sold at \$10.00 per Sq.Ft.", an estimate which he repeated in his evidence in chief (ibid, p 421) when he said that he estimated that the commercial lots would be sold at \$10 a square foot. Mr Burke was a witness for the respondent government.

Unsurprisingly, counsel for the appellant did not cross-examine him on his estimate, and counsel for the respondent was unable to point to any challenge to that evidence. In these circumstances there was evidence of an estimated figure for commercial land before the Board, on which it was quite entitled to rely. Their Lordships regard the criticism made by the Court of Appeal as unfounded. They consider that the appeal should be allowed on this point and that that part of the order of the Court of Appeal whereby the valuation of the commercial land was remitted to the Board for reconsideration should be set aside.

17. Their Lordships consider finally the appellant's ground of appeal (vi), the

restriction of costs ordered by the Board to 65 per cent of the appellant's costs. Claimants' costs of the preparation and submission of claims are provided for in section 22 of the Land Acquisition Act, the material part of which for present purposes is subsection (1):

"The authorized officer shall pay to the claimant the reasonable costs incurred by him in or about the preparation and submission of his claim, unless the Chairman considers that the claimant has failed to put forward a proper claim within a reasonable time after the service of the notice under section 7 or that the claim put forward is grossly excessive or that he has been a party to some deceit or fraud in respect of his claim."

18. The Board held in paragraph 52 of its award:

"The Claimant has succeeded in obtaining an Award that is higher than the offer that was made by the Respondent. The Award however falls woefully short of the amounts being claimed. It may well be that if the Claimant had been more reasonable in its approach to this matter, the litigation that ensued may never have been necessary. Awarding the Claimant his full costs will only serve to encourage extravagant claims in cases of this sort. In all the circumstances by a majority decision the Board will award the Claimant 65% of its costs. Interest will run on the Award from the respective dates of acquisition at the rate of 5% per annum."

The Court of Appeal was even more draconian in its approach, which Georges JA (Ag) set out in paragraph 52 of his judgment:

"With regard to Ground 2 of the Respondent's ground of appeal I find it difficult to accept that the Board awarded the Claimant [Appellant] 65% of its costs having held that its own award fell woefully short of the amounts claimed and that had the Claimant been

more reasonable in its approach the litigation which ensued may have been unnecessary. For my part having regard to all the circumstances I would order that each party should bear its own costs."

19. Mr Newman contended that the Board and the Court of Appeal had failed to have regard to the correct principles in making these orders as to costs. In particular, he submitted that a claimant should not be deprived of any part of his costs, even if he had put forward an exaggerated claim, unless he had thereby caused an obvious and substantial escalation in the costs incurred by the parties.

20. In support of his submission Mr Newman relied upon the analogy of the practice now obtaining in the High Court and Lands Tribunal in England and Wales, citing the decision of the Court of Appeal in *Purfleet Farms Ltd v Secretary of State for Transport, Local Government and the Regions* [2002] EWCA Civ 1430; [2003] 1 P & CR 20. Under Rule 52(1) of the Lands Tribunal Rules 1996 (SI 1996/1022 as amended) the costs of and incidental to any proceedings are in the discretion of the Tribunal, but it is provided by para 19.2 of the Lands Tribunal Practice Direction (April 5, 2001) that "this discretion will usually be exercised in accordance with the principles applied in the High Court and county courts". Those principles are now contained in Part 44 of the Civil Procedure Rules. Rule 44.3(1) gives a general discretion to the court regarding the payment of costs by one party to another. Rule 44.3(4)(a) provides that in deciding what order (if any) to make about costs, the court must have regard to all the circumstances, including "the conduct of all the parties". Rule 44.3(5)(d) amplifies this by providing that the conduct of the parties includes -

"whether a claimant who has succeeded in his claim, in whole or in part, exaggerated his claim."

Para 19.2 of the Lands Tribunal Practice Direction echoes the CPR by a very similar

provision about whether or not a party has exaggerated his claim. It may be seen accordingly that the courts and the Lands Tribunal have what is on its face a wide discretion to reduce costs on the ground of exaggeration, not just, as in *Montserrat*, if the claim is "grossly excessive", a more demanding criterion.

21. In the *Purfleet Farms* case the claimant had submitted a claim for some £12.26 million. The respondent made a sealed unconditional offer of £5 million and the Lands Tribunal awarded compensation of £6.66 million. It made an order for payment of three quarters of the claimant's costs, on the ground that its claim had been exaggerated. The decision was upheld by the Court of Appeal, but it was made clear in the judgments that a successful claimant should ordinarily be entitled to all his costs and that exaggeration by itself should not give rise to a reduction, unless his conduct has led to "an obvious and substantial escalation in the costs over and above those which it was reasonable for the claimant to incur".

22. As its starting point the Court of Appeal referred to the fact that a claimant in a case of compulsory acquisition has had his land taken and is compelled to seek compensation from the acquiring authority. As Lord President Hope expressed it in *Emslie & Simpson Ltd v Aberdeen District Council* [1995] RVR 159 at 164:

"The expenses of determining the amount of disputed compensation may be seen to be part of the reasonable and necessary expense which is attributable to the taking of the lands compulsorily by the acquiring authority ... The principle which applies to litigation ... is that the cost of litigation should fall on him who caused it. The cost of determining the amount of the disputed compensation would seem, according to this principle, to fall on the acquiring authority without whose resort to the use of compulsory powers there would have been no need for the owner or occupier to be compensated."

Potter LJ at paragraph 30 of his judgment in the *Purfleet Farms* case expressed the opinion that the Lands Tribunal practice in relation to costs did not differ from that applied in the courts, but that the difference between the regimes was -

"essentially one of emphasis, that is to say that there is a particular need in the case of a compensation reference before the Lands Tribunal to take as a proper starting point the fact that the claimant has had both the procedure and the need to vindicate his right to compensation thrust upon him by use of compulsory powers."

Potter LJ agreed with the remark of Lord Morison at page 163 of the *Emslie & Simpson* case that it is -

"perfectly reasonable that ... a claimant should put forward his claim on the maximum basis which he can reasonably support and should be entitled to the expenses of doing so if he is successful in the general assertion of his right."

23. Potter LJ set out his conclusions in several passages which bear repetition in full. At paragraph 29 he enunciated a general rule governing the exercise of the discretion over a claimant's costs:

"... the proper approach of the Tribunal for the costs of a successful claimant (i.e. a claimant who is awarded more than the amount of an unconditional offer by the respondent) should be that he is entitled to his costs incurred in the proceedings in the absence of some 'special reason' to the contrary. Whether such special reason exists in any given case is a matter for the judgment of the Lands Tribunal. Plainly it may exist where wasted or unnecessary costs have been incurred for procedural reasons as a result of the conduct of the claimant (e.g. abandoned issues, unnecessary adjournments, or failure to comply with directions of the Tribunal). However, so far as the nature and substance of the case advanced by the

claimant is concerned, special reasons should only be regarded as established where the Tribunal considers that an item of costs incurred or an issue raised was such that it could not on any sensible basis be regarded as part of the reasonable and necessary expenses of determining the amount of the disputed compensation. This would apply not only to a claim advanced without any statutory basis but to other examples of manifestly unreasonable conduct which may give rise to unnecessary expense in the course of the proceedings. It means, in my view, that, following the hearing of a compensation reference in the Lands Tribunal in which the claimant has been successful, a special reason for departing from the usual order for costs should only be found to exist in circumstances where the Tribunal can readily identify a situation in which the claimant's conduct of, or in relation to, the proceedings has led to an obvious and substantial escalation in the costs over and above those costs which it was reasonable for the claimant to incur in vindication of his right to compensation."

At paragraphs 36-7 Potter LJ stated:

"36. ... exaggeration alone is not enough in the event of a large disparity between the sum claimed and the sum awarded. The matters to which the Tribunal should have regard are (a) the reasons for that disparity, and (b) their effect upon the conduct of the claim. As to (a), if the reasons are defensible, in the sense that there was a legitimate, albeit unsuccessful, argument put forward in support of the figure concerned, there can be no good reason to regard the claim as exaggerated in the pejorative sense necessary to justify a sanction in costs. As to (b), if, in any event, the effect on the proceedings in terms of the time spent and the costs incurred in disposing of the issue or argument concerned is relatively insignificant, then again an

adverse order is unlikely to be appropriate.

"37. Turning to the question of expert evidence, if the amount of the 'exaggerated' claim is based on the valuation, opinion and evidence of the claimant's expert witness, it will rarely be appropriate in my view to make an adverse costs order against the successful claimant. Valuation is an inexact science. In any case where, by reason of the nature or features of the subject site and/or the state of the market in respect of sites for similar development, there is no close or obvious comparable available, there is bound to be legitimate room for argument and difference of opinion as to the validity or usefulness of a proffered comparable, whether by reason of its location, nature or proposed use. If the Tribunal concludes that, on examination, or as a result of argument, the comparison between the comparable relied on and the subject site is inapt or unhelpful, that should not ordinarily invite a penalty in costs on the grounds that its assertion or resultant discussion has taken up the time of the Tribunal unnecessarily."

Finally, at paragraph 38 he accepted the validity of the propositions advanced on behalf of the claimant:

"... disallowance of a proportion of the claimant's costs will usually only be justified where the Tribunal is satisfied that (a) no competent valuer could reasonably have regarded the comparable as of real relevance or assistance in the valuation exercise; (b) as a result of its introduction and discussion, a significant amount of the Tribunal's time has been wasted and the proceedings unduly prolonged; (c) no equivalent or near equivalent proportion of the proceedings has been spent dealing with issues unreasonably and unsuccessfully raised by the respondent; (d) the amount or proportion of the costs disallowed is proportionate to the time wasted."

24. Chadwick LJ, agreeing with Potter LJ, stated at paragraph 43 of his judgment:

"It follows that the fact that the claimant has not been awarded as much as he was seeking by way of compensation - or that the award is nearer (even much nearer) to the amount that the acquiring authority had offered than to the amount sought - cannot, of itself, be a reason for depriving the claimant of his costs of the reference. But that does not lead to the conclusion that the claimant's conduct in exaggerating his claim can be of no relevance. The Tribunal may be satisfied, in the particular case before it, that the fact that the claimant has exaggerated his claim has led to costs which were not reasonable for the claimant to incur in pursuit of the compensation to which he was entitled; or that it has been the pursuit of issues which it was not reasonable for the claimant to pursue that has led to the exaggeration of the claim. Where the Tribunal makes an award of compensation which is well below the amount claimed, it is appropriate for it consider, in the context of an award of costs, both whether the fact that the claim was exaggerated has led the claimant to incur costs which (given a more realistic evaluation of his claim) he would not have incurred and whether the explanation for the difference between the award and the amount claimed is that issues were pursued on which the claimant had no real chance of success."

The Court of Appeal went on to consider the facts of the case and concluded that the claimant had relied on expert evidence which should have been recognised as unreliable, and that the decision to rely on that evidence had led to the waste of substantial time and expense. It accordingly affirmed the decision of the Lands Tribunal allowing the claimant only three quarters of its costs.

25. Their Lordships consider that the principles set out in the *Purfleet Farms* case should be applied to the operation of the provisions of section 22 of the Land Acquisition Act of Montserrat. A claimant should *prima facie* be entitled to his full costs of preparing and presenting his claim.

The Board of Assessment's discretion to reduce the award from the payment of full costs should be exercised judicially. If it holds that the claim was grossly excessive, it is necessary for the Board then to inquire whether the exaggeration gave rise to an obvious and substantial escalation in the costs over and above those which it was reasonable for the claimant to incur. If it is satisfied that this was the case, then it is open to the Board to exercise its discretion to deprive the claimant of part of his costs. The amount of departure from full payment of the claimant's costs should be proportionate, having regard to the amount of waste of time and costs properly attributable to the claimant's acts or omissions.

26. Neither the Board nor the Court of Appeal applied the principles set out in the *Purfleet Farms* case to the award of costs to the appellant, and that award requires to be reconsidered. Their Lordships consider that this should be done by the Board, which will be in a position to review the exercise of its discretion in the light of these principles and determine whether to vary or affirm the award of costs. As far as the costs in the Court of Appeal are concerned, their Lordships are of the view that, as the appellant was only partially successful on the appeal, the order that each party bear its own costs of the appeal was appropriate.

It would also regard that as a proper disposition in respect of the costs of the appeal to the Privy Council.

27. Their Lordships will humbly advise Her Majesty that (a) those parts of the order of the Court of Appeal should be set aside whereby (i) the issue of the valuation of the commercial lands was remitted to the Board of Assessment (ii) it was ordered that each party pay its own costs of the proceedings before the Board (b) the issue of the costs of the proceedings before the Board be remitted to

the Board for reconsideration in the light of the principles set out in this judgment (c) the order of the Court of Appeal be otherwise affirmed (d) each party should abide its own costs of the appeal to the Privy Council.

