

18, 1958

No. 12 of 1958.

IN THE PRIVY COUNCIL

ON

ON APPEAL

28 JAN 1959

FROM THE NEW ZEALAND COURT OF APPEAL

INSTITUTIONAL
LEGAL

CEDE

52180

BETWEEN

MAORI TRUSTEE Appellant

and

MINISTRY OF WORKS Respondent

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CASE FOR THE APPELLANT

Record

1. This is an appeal from the judgment of the Court of Appeal of New Zealand dated 19th December 1956 upon questions submitted for the opinion of the Supreme Court by the Maori Land Court by way of Case Stated and relating to the basis for the assessment of compensation payable by the Crown in respect of an area of 91 acres 1 rood 24 perches acquired compulsorily by the Crown under the Public Works Act 1928. By consent the Case Stated was removed into the Court of Appeal for hearing.

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2. The land taken comprises parts of five blocks of what may conveniently be termed the Whareroa Block and borders on the foreshore of the Harbour at Tauranga. Part of a sixth block owned by a European and between the Maori blocks was also taken. The Maori land taken was in turn part of a larger area of Maori land and the total area of Maori land was 242 acres 0 roods 25 perches.

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p.4, l.1.

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- p.4, 1.32. 3. In 1948 a plan was prepared for the sub-division of the whole of the said Maori Land together with the said European land into allotments for residential purposes and such plan, as is required by Section 3 of the Land Subdivision in Counties Act 1946, was submitted to the Minister of Lands for his approval.
- p.4, 1.39. 4. Later in 1948 and with one of the objects being to facilitate the proposed sub-division, the Maori owners applied to the Maori Land Court for an Order vesting the land in a trustee. That Court, in 1948, made a Vesting Order under Section 8 of the Maori Purposes Act 1943 vesting the lands in the Waiairiki District Maori Land Board as trustee. Such Order could not become effective until approved by the Minister for Maori Affairs and his approval was requested. 10
- By virtue of Section 77 of the Maori Land Act 1931 the Judge of the Maori Land Court who made the Order and the Registrar of that Court comprised the Board. 20
- p.4, 1.45. 5. Pending the approval of the Minister of Maori Affairs neither the said Maori Land Board nor the beneficial owners could proceed with the sub-division. In addition approval of the sub-divisional plan was necessary.
- p.4, 1.45. 6. On 13th September 1951 notice of intention to take the said area of 91 acres 1 rood 24 perches was gazetted.
- p.3, 1.44
p.4, 1.42. In November 1951 the Minister of Maori Affairs notified his approval to the Vesting Order. 30
- p.5, 1.2. The gazetting of the notice rendered any further steps for the subdivision useless.
- p.3, 1.27. 7. By proclamation dated 5th September 1952 and gazetted on 11th September 1952 the said area of 91 acres 1 rood 24 perches was taken and vested in the Crown for the purposes of better utilisation under the provisions of the Public Works Act.
- By virtue of Section 8(1) of the Public Works Amendment Act 1952 the specified date for such taking was deemed to be 15th September 1952. 40

8. On 18th September 1952 application was made by the Crown to the Maori Land Court to assess the compensation payable for the lands taken.

p.4, 1.7.

There is no difference in the basis for assessment of compensation by reason of the land being Maori Land but such compensation is to be determined by the Maori Land Court.

10 9. On 29th September 1952 the said Maori Land Board gave notice (inter alia) that its claim for compensation in respect of the lands taken was £95,711. -. -. .

p.4, 1.11.

On 30th September 1952 the rights of the said Maori Land Board were transferred to the Maori Trustee by virtue of Section 7 of the Maori Land Amendment Act 1952.

p.4, 1.2.

In this Case the Maori Trustee is deemed to be the Appellant.

20 10. On 6th April 1954 the Maori Land Court sitting at Tauranga commenced a hearing to determine the compensation.

p.4, 1.29.

11. The Court has found as follows :-

(a) "At the time of the taking the land was in an undeveloped state".

p.4, 1.32.

30 (b) "No evidence was adduced to show when the subdivision would have been proceeded with if the Minister's approval had been granted at an earlier date. The evidence adduced did show that the carrying out of a subdivision would have involved a considerable outlay for roading, drainage and other development, and other costs of subdivision."

p.5, 1.5.

40 (c) "Upon hearing the evidence and submissions of counsel the Court has found that part of the land would have been immediately saleable at the date of the taking in lots upon a subdivision either for residential or industrial purposes, and that the balance would have been saleable in lots upon a subdivision for

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- p.5, 1.11. residential or industrial purposes from time to time over a period of years subsequent to the date of taking.
- p.5, 1.19. 12. A dispute arose as to the basis upon which the value of the land should be assessed, including whether there was any difference in the method to be applied as to that part which would have been immediately saleable in lots and the remaining part which would have been saleable in lots from time to time subsequently to the date of taking. 10
- p.5, 1.29. This lead to the Case Stated the questions in which are set out in the Record.
- p.34, 1.20. 13. The Case Stated came before the Court of Appeal comprising Gresson, F.B. Adams and Shorland JJ on 11th and 12th April 1956. Decision was reserved and judgment was given on 19th December 1956,
- p.11, 1.41. 14. The questions as submitted were not answered in that form. Gresson J. held that the opinion of the Court should be expressed under four headings which appear in the Record. 20
- Under the third heading his Honour stated :-
- p.12, 1.4. "The Court must contemplate the sale of the land as a whole unless on the specified date there could have been separate sales of particular portions, and there was a market for such separate portions. Only if the land had been legally subdivided at that date so that particular lots might have been sold and title given can it be said that there could have been separate sales of particular portions." 30
- p.33, 1.43. Shorland J. concurred.
- p.14. F.B. Adams J. likewise concurred but subject to the qualification that he did not accept any difference because part of the land may have been legally subdivided. In his Honour's view the land had to be valued as a whole with regard had to any potentiality.
15. Section 42(1) of the Public Works Act 1928 provides as follows :- 40

"Every person having any estate or interest in any lands taken under this Act for any public works, or injuriously affected thereby, or suffering any damage from the exercise of any of the powers hereby given, shall be entitled to full compensation for the same from the Minister or local authority, as the case may be, by whose authority such works may be executed or power exercised".

10 Section 29(1)(b) of the Finance Act (3) 1944 provides -

"The value of 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 on the specified date might be expected to realise."

20 16. Before the Court of Appeal the rival contentions of the parties related to a large extent whether the decision of the Full Court in St. John's College Trust Board v. Auckland Education Board (1945 N.Z.L.R.507) was correct. The Appellant contended that the principles applied in that case should be applied to this case. Reference to that case appears in all the judgments of the Court of Appeal. It was distinguished by Gresson and Shorland JJ. and F.B. Adams J. held it was wrongly decided.

30 17. The Appellant contends that if the method as propounded by the majority of the Court of Appeal is adopted, and even more so on the basis stated by F.B. Adams J., the beneficial owners would receive substantially less than full compensation. Such method, the Appellant says, ignores the realities of intended subdivision and the findings of the Maori Land Court that the whole of the land would have been saleable by lot, part immediately upon subdivision and the balance subsequently. The Appellant further contends that such method does not have sufficient regard to the probability
40 that there would be a number of purchasers many of whom would buy lots for their own retention and use and not for resale.

18. The Appellant further contends that the requirement of lots being in fact and in law

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available for sale on the specified date is an erroneous interpretation of the relevant statutory provisions as are referred to in para. 15 herein. He contends that the right to full compensation is not to be affected merely by reason that various formalities to permit and complete the subdivision have not been completed on the specified date and that the ascertainment of the true value of the land to the owners requires this aspect to be ignored except to the extent that the costs and delay involved in completing the subdivision are proper deductions to be made. 10

19. The Appellant further contends that the correct basis for assessment of compensation required the initial assumption that the land has been subdivided and is then to be valued on a per lot basis. From this starting point the ascertainment of the value to the beneficial owners in the circumstances of this case should proceed as follows :- 20

(a) As to that part of the land saleable in lots immediately upon subdivision, on the assumption of the aggregate of the selling value of each such lot if sold direct by the beneficial owners to a number of purchasers, many or all of whom would buy the land for their own retention and use, less a proportionate share of the costs of subdivision and any other appropriate deductions. 30

(b) As to the balance of the land, on the assumption that it is sold to a willing purchaser who has assessed the value initially on a per lot basis and then has made reasonable deductions for the costs of subdivision of that part, the delay in sales, profit to himself on a resale in lots and any other appropriate deductions.

20. The Appellant further contends that in fact and in law the land was saleable in lots as at the specified date. 40

The Appellant respectfully submits that the judgment appealed from is erroneous and should be set aside. The questions asked by the Maori Land Court should be answered

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1. "No".
 2. "No".
 - 3.A "Yes"
 - 3.B "No".
 - 4.A "No"
 - 4.B "Yes".

Further and alternatively the Questions should be answered as stated in paragraph 19 hereof or to the like effect for the following among other REASONS :-

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1. BECAUSE the method for the assessment of the compensation as propounded by the Court of Appeal would result in the beneficial owners receiving less than full compensation.
 2. BECAUSE the majority of the Court of Appeal was wrong in holding that, before the value of part or all of the land may be assessed on a value per lot basis, there must have been in fact and in law a completed subdivision.
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 3. BECAUSE the Court of Appeal has failed to have sufficient regard to the intention to subdivide and the finding of the Maori Land Court that the whole of the land was saleable in lots.
 4. BECAUSE the Court of Appeal was wrong in not applying like principles as did the full Court in the St. John's College case.
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 5. BECAUSE in the circumstances as found by the Maori Land Court the Court of Appeal ought to have held that the proper starting point was to ascertain the value of the whole of the land as if it had been subdivided and would have been sold to a number of purchasers.
 6. BECAUSE the Court of Appeal was wrong in not holding that different methods were

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to be applied in determining the value of that part of the land immediately saleable in lots upon subdivision and of the balance.

7. BECAUSE that at the specified date the land was in fact and in law saleable in lots to more than one purchaser.

PATRICK O'CONNOR.

Counsel for the Appellant.

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- and -

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CASE FOR APPELLANTS

WRAY SMITH & CO.,
3/4 Adelaide Street,
Strand, W.C.2.

Solicitors for the Appellants.