

IN THE PRIVY COUNCIL

O N A P P E A L

FROM THE COURT OF APPEAL OF THE SUPREME COURT OF JUDICATURE OF GUYANA

B E T W E E N

10 OLIVE CASEY JAUNDOO in her capacity as Executrix of the Estate of WILLIAM ARNOLD JAUNDOO, deceased, Probate whereof was granted by the High Court of Guyana on the 17th day of November, 1965 and numbered 613 (Applicant) Appellant

UNIVERSITY OF LONDON
 INSTITUTE OF ADVANCED
 LEGAL STUDIES
 -7 APR 1972
 25 RUSSELL SQUARE
 LONDON, W.C.1.

AND

THE ATTORNEY GENERAL OF GUYANA (Respondent) Respondent

CASE FOR THE APPELLANT

RECORD

1. This is an Appeal by leave of the Court of Appeal of the Supreme Court of Judicature, Guyana, from a judgment and Order dated 6th day of June, 1968 of the Court of Appeal of the Supreme Court of Judicature, Guyana, (Sir Kenneth Stoby, Chancellor and Luckhoo, J.A., Cummings J.A., dissenting) dismissing an appeal of the Appellant-Applicant from a judgment and order dated the 12th day of August, 1966 of the High Court of the Supreme Court of Judicature, Guyana, (Bollers C.J.) by which the Appellant's motion against the Respondent as representing the Government of Guyana praying for relief against an alleged violation of the fundamental right contained in Articles 8 and 19 of the Constitution of Guyana prohibiting compulsory

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acquisition of property without prompt payment of proper compensation was dismissed with costs. By the said judgment and order of the said Court of Appeal the Appellant's appeal was dismissed but the order against the Appellant for costs in the said High Court was set aside and the Respondent was ordered to pay to the Appellant one half of her costs in the said High Court. No order was made in respect of the costs of the said appeal.

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2. The Appellant is the legal personal representative of William Arnold Jaundoo, deceased, and acts and has acted in such capacity throughout these proceedings. There was at all material time vested in the Appellant as such legal personal representative all that land at Soesdyke on the East Bank of the Demerara River, Guyana, more particularly described in the originating Notice of Motion by which these proceedings were commenced and the said land continues so to be vested save and except for such part of the said land as has been acquired compulsorily and without compensation by the Government of Guyana as hereinafter set out.

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3. The facts giving rise to these proceedings are not in dispute. The Applicant is the executrix of the said estate of William Arnold Jaundoo deceased under probate granted by the High Court of Guyana on 17th November, 1965 and numbered 613. Prior to the death of the deceased the Government of Guyana had decided to acquire compulsorily for road building purposes a part of the property hereinbefore referred to and more fully described in the originating Notice of Motion and at the time of the service of the said Notice of Motion full and free possession was enjoyed by the Appellant on behalf of the estate of the said deceased. Notice of intention to build a road from Atkinson to McKenzie, Guyana was published in the Official Gazette on the 5th, 12th and 19th June, 1965. The Government of Guyana have stated that the Appellant is not entitled to any compensation but have said that they will make a payment of compensation in respect of the compulsory acquisition of the land on an ex gratia basis. On 19th July, 1966 the Appellant learned

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10 that machinery and equipment were being transported to the land and that bulldozing was about to commence thereon and accordingly the legal representative of the Appellant wrote to the Chief Engineer, Roads Division, Ministry of Works and Hydraulics a letter requesting that no operations take place on the land until the Appellant had been informed of the Ministry's estimate of the amount of crops and the value of a sandpit through which the said road was to run and the amount of compensation to be recommended and claiming that the compensation should be in the vicinity of \$250,000 if, as was assumed, the sandpit could no longer be worked after the compulsory acquisition of the land. On the same day the Appellant met the Chief Engineer and told him that in particular the destruction of crops on the land without any agreement between the Government of Guyana and herself concerning their quantity and whether the land acquired included a sandpit, would cause great difficulty in any subsequent litigation with respect to the assessment and payment of compensation. The Appellant then requested that operations should not commence until the quantum of compensation was settled but said that she was prepared to agree to the operations commencing if there could be agreement as to the quantity of crops and as to whether the land to be taken included a sandpit or any part thereof. It was agreed between the said Chief Engineer and the Appellant that a person representing the Appellant should visit the area of the intended works with a representative of the Government of Guyana to assess the amount of crops and to ascertain whether the road was to pass through a sandpit on the land. The Appellant was informed that road building operations would commence on the land during the then current month.

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4. Early the next day, namely 20th July, 1966 the Appellant learned from the said Department that bulldozing was to commence on the land immediately notwithstanding that she had not by then been able to secure the services of the civil engineer of her choice and that no examination or assessment had been made as had been agreed.

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5. In view of the likely immediate destruction of all or some of the evidence relating to the amount of compensation payable, the present proceedings were commenced by originating Notice of Motion on the 20th July, 1966. By the said Notice of Motion the main relief sought was :-
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- 2-3 (1) An injunction restraining the Government of Guyana from commencing or continuing the said road building operations on the said land unless and until adequate compensation in the sum of \$250,000 or such other sum as the Court might consider just be paid to the Appellant in respect of the compulsory acquisition of the said part of the said property; 10
- 4 (2) A survey to be undertaken on behalf of the Applicant and the Government of Guyana jointly of crops growing on the said property with the right of the representatives of the Applicant and of the Government of Guyana to submit separate reports to the Court; 20
- 4 (3) Payment to be made by the Government of Guyana to the Applicant promptly of such compensation as might be assessed by the Court in respect of the said compulsory acquisition;
- 4 (4) Such further or other orders and/or directions as the Court might make or give to enable the Applicant to be promptly paid adequate compensation in respect of the property being compulsorily acquired by the Government of Guyana and before any evidence of crops or other assets on the said property had been destroyed by the road building operations; 30
- 5 (5) The Government of Guyana to pay to the Applicant costs of the Motion.
- 6-12 An affidavit was sworn on 20th July 1966 by the Appellant in support of the said Motion. 40
- 12-17 An affidavit in answer thereto was sworn on behalf of the Respondent by Philip Anderson Desmond

Allsopp, the Chief Engineer of the Roads
Division of the Ministry of Works and Hydraulics
of the Government of Guyana on 26th July, 1966
and an affidavit in reply thereto was sworn by
the Appellant on 27th July, 1966.

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6. The Constitution of Guyana provides inter
alia as follows :-

- 10 "8. (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 by
or under the authority of a written
law and where provision applying
to that acquisition or taking of
possession is made by a written
law -
- (a) requiring the prompt payment
of adequate compensation; and
- 20 (b) giving to any person claiming
such compensation a right of
access, either directly or by
way of appeal, for the
determination of his interest
in or right over the property
and the amount of compensation,
to the High Court."

.. .. .

- 30 "19. (1) Subject to the provisions of
paragraph (6) of this article, if
any person alleges that any of the
provisions of articles 4 to 17
(inclusive) of this Constitution
has been, or is being or is likely
to be contravened in relation to
him,(or, in the case of a person
who is detained, if any other
person alleges such a contravention
in relation to the detained person),
then, without prejudice to any other
40 action with respect of the same
matter which is lawfully available,
that person (or that other person)
may apply to the High Court for
redress.

RECORD

- (2) The High Court shall have original jurisdiction -
- (a) to hear and determine any application made by any person in pursuance of the preceding paragraph;
 - (b) to determine any question arising in the case of any person which is referred to in pursuance of the next following paragraph, 10

and make such 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 articles 4 to 17 (inclusive) of this Constitution;

Provided that the High Court shall not exercise its powers under this paragraph if it is satisfied that adequate means of redress are or have been available to the person concerned under any other law. 20

.. .. .

- (5) Parliament may confer upon the High Court such powers in addition to those conferred by this article as may appear to Parliament to be necessary or desirable for the purpose of enabling the High Court more effectively to exercise the jurisdiction conferred upon it by this article. 30

- (6) Parliament may make provision with respect to the practice and procedure -
- (a) of the High Court in relation to the jurisdiction and powers conferred upon it by or under this article; 40

(b) of the High Court and the Court of Appeal in relation to appeals as to the Court of Appeal from decisions of the High Court in the exercise of such jurisdiction;

(c);

10 including provision with respect to the time within which any application, reference or appeal shall or may be made or brought and, subject to any provision so made, provision may be made with respect to the matters aforesaid by rules of court."

7. The proceedings therefore involved amongst other matters the question whether to prevent prejudice to a citizen from a breach by the Government of Guyana of a fundamental right given
20 by the Constitution of Guyana:-

- (1) The High Court can be moved by originating Notice of Motion for relief;
- (2) An injunction can be granted by the High Court which would have the effect of restraining the Government of Guyana or others from taking land of a private citizen in breach of such citizen's fundamental right to prompt payment of adequate compensation under Article 8 of
30 the said Constitution or in such manner as to prejudice the citizen's right to such compensation;
- (3) the High Court has jurisdiction to make an order for the preservation of property to be taken or taken by the Government of Guyana compulsorily until an inspection thereof and report thereon to the High Court on behalf of an aggrieved person and the Government of Guyana;
- 40 (4) the High Court has jurisdiction to give such directions or make such orders as will secure the determination according to law

RECORD

of the proper compensation in respect of land compulsorily taken by the Government of Guyana and will secure prompt payment thereof to the dispossessed party.

20-29 8. The originating Notice of Motion came on for hearing before the Honourable Chief Justice Bollers on 28th July, 1966 and on being called on objections were immediately made on behalf of the Attorney General in limine to the form of the proceedings on the alleged grounds that an Applicant could not approach the High Court for redress for breach of a fundamental right under article 19 (1); (2) and (6) by way of notice of originating motion. It was further said on behalf of the Respondent that there were three further points by way of preliminary objection which he wished to reserve but which were not stated nor argued. 10

24 9. Accordingly the aforesaid objection was heard as a preliminary objection and the motion was not argued nor considered on its merits. 20

29-46 10. On 12th August, 1966 the Honourable Chief Justice Bollers gave judgment on the said preliminary objection in favour of the Respondent and dismissed the application of the Appellant with costs to be taxed in favour of the Respondent on the grounds that the application by way of originating motion was a wholly misconceived procedure and that the Applicant was, therefore, not entitled to any relief on an application commenced by Originating Notice of Motion. The grounds upon which the learned Chief Justice so held were that by virtue of order 1, order 2 and order 3 of the local Rules of the Supreme Court the proceedings were required to be commenced by a Writ of Summons. 30

47-55 11. On 19th August, 1968 the Appellant gave notice of appeal from the said judgment of the learned Chief Justice to the Court of Appeal of the Supreme Court of Judicature. By such Notice of Appeal the Appellant contended:- 40

(1) That the learned Chief Justice had erred in law on a number of grounds in holding that

an originating Notice of Motion was not a means by which the Appellant could obtain relief from the High Court for alleged breaches of article 8 of the Constitution of Guyana;

(2) that the Court of Appeal should set aside the order dismissing the application by the Appellant;

10 (3) that the Court of Appeal should direct that the land concerned ought not to be taken unless compensation is assessed and paid to the Appellant by the Government of Guyana and that such orders, directions and grants of such Writs as would guarantee for the Appellant the rights conferred by article 8 of the Constitution of Guyana ought to be made, alternatively

20 (4) that it should be ordered that the application be remitted to the High Court to be determined on its merits or such other order paid as the Court of Appeal might consider just;

(5) that the costs of the Appeal and of the Court below should be paid by the Respondent.

12. The appeal was argued on the 22nd and 23rd January, 1968. Judgment was given on 6th June, 1968. The learned Chancellor concluded that an Originating Motion could be filed where Parliament had enacted legislation which the Applicant claimed was ultra vires the Constitution or where the Applicant desired one of the prerogative Writs but otherwise an action was a proper way of obtaining an injunction if such a remedy was available and he would have dismissed the appeal but in view of the judgment of Luckhoo, J.A., he agreed that the Appellant should have half the costs in the Court below and that there should be no costs on the appeal. Luckhoo, J.A., held that the application was properly brought by way of Originating Motion but that there was no jurisdiction to grant the remedy of injunction or other coercive remedy against the Government

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RECORD

134-177 of Guyana and therefore dismissed the appeal for want of jurisdiction on the Motion for the High Court to grant the said remedies and in the circumstances held that the Appellant was entitled to half of her costs in the Court below and that each party should bear its own costs of the appeal. Cummings, J.A., would have allowed the appeal, have set aside the judgment of the learned Chief Justice, have ordered that the Appellant should have her costs both of the appeal and in the Court below and would have remitted the matter to the learned trial Judge for hearing on its merits. 10

56 13. In the course of his judgment, the learned Chancellor stated that the appeal raised a point of some constitutional importance regarding the right of a citizen to approach the Court for the protection of his fundamental rights. After setting out the history and the relief sought by the Originating Notice of Motion the learned Chancellor considered the language of Article 19 of the Constitution. He came to the conclusion that the true purpose of the fundamental rights provisions in the Constitution of Guyana was to preclude Parliament from legislating in derogation of the fundamental rights and that it was never intended that the normal process of the Courts should be superceded where no law had been enacted in defiance of fundamental rights. The learned Chancellor then considered whether in any event an injunction could be granted against the Crown. After considering Article 3 and Article 19 of the Constitution of Guyana and Article 32 of the Constitution of India and the law relating thereto, the Learned Chancellor held that Article 19 did not entitle the Court to grant an injunction against the Crown. The learned Chancellor then considered whether the Rules of the Supreme Court 1955 entitled the Appellant to seek relief by way of Originating Notice of Motion. After considering Order 2 of the said Rules and the history of the Rules and of the common law in Guyana, the case of In re Meister, Lucius and Bruning Limited (1914) 7.N. 390 and The Rules of the Supreme Court in England, the learned Chancellor concluded that an action was 20

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10 a proper way of obtaining an injunction if such a remedy was available; that where Parliament had violated no constitutional provision an individual, who claimed that the Crown had deprived him of a fundamental right but was not acting under an invalid law, must proceed by way of a declaratory action; and that a declaration could not be made on motion except where a specific law was attacked in order to have it struck down.

14. Luckhoo, J.A., in his judgment after referring to the facts and the relief sought in the motion, considered whether the Appellant was entitled to bring the proceedings by way of Originating Notice of Motion. He considered whether at common law an application to a Court could be made by motion and referred to re. Meister, Lucius and Bruning Limited 107 (1914) 31 T.L.R. 28, Pierre v. Mbanefo (1965) 109 W.L.R. Vol. 7 Part II, p. 433 and came to the conclusion that an action appeared to be the very antithesis of the procedure contemplated by Article 19 of the Constitution of Guyana. 113 The learned Justice of Appeal then said that if that was the only question for decision, the motion would have to be remitted for hearing on its merits, but the High Court's jurisdiction to grant coercive remedies must receive scrutiny. 117 The learned Justice of Appeal then considered 118 the remedies open to a citizen who complained of acts done by the Crown or by a public servant. He held that, although the Court 132-134 might declare or assess damages against the Government, the State was in effect the Judge in its own cause and could not exercise constraint against itself: accordingly, there was no jurisdiction in the High Court to grant the remedy of an injunction or other coercive remedy against the Government of Guyana.

15. Cummings, J.A., first considered the 134 orders which the Appellant sought in her Originating Notice of Motion. He observed that 138 only two questions arose on the appeal, namely:

- (i) Does Article 19 of the Constitution of Guyana confer a new jurisdiction in the High Court with respect to the enforcement of fundamental rights?

RECORD

(ii) If so, what procedure did the Legislator contemplate for the invocation of the exercise of this new jurisdiction by the Court?

175 The learned Justice of Appeal, having considered (inter alia) English law and Indian law, came to the conclusion that Article 19 of the Constitution of Guyana conferred a new and extraordinary jurisdiction on the High Court of Guyana and that the proper method of application to the Court for the exercise of such jurisdiction was by motion praying the issue of "such order", "such Writs", "such directions" as the Court "may consider appropriate for the purpose of enforcing or securing the enforcement" of this extraordinary right and that it was incumbent upon the Court so to do regardless of whether or not the Applicant indicated in his prayer what form of Writ, direction or order he desired. The learned Justice of Appeal then stated that although full argument had not been heard on this aspect of the matter, there was in his view, sufficient highly persuasive authority to establish beyond any doubt the view that the Courts had jurisdiction to order that the appropriate authority under the Roads Ordinance be joined as a Defendant and restrained from continuation of the works until compensation should have been assessed in accordance with the provisions of the Public Lands Acquisition Ordinance CAP. 179. 10 20 30

16. The Appellant respectfully submits that the judgment of Luckhoo, J.A., and of Cummings, J.A. were correct on the issue whether proceedings for ascertainment of and enforcement of the Applicant's fundamental rights under Article 8 of the Constitution of Guyana could be commenced by Originating Notice of Motion and that the judgment of Cummings, J.A. was correct on the issue whether the High Court, upon a hearing of the merits could grant all or any relief necessary to enable compensation to be assessed and paid to the Appellant. The Appellant respectfully submits that the jurisdiction given to the High Court by virtue of Article 19 of the Constitution of Guyana is a new jurisdiction 40

which cannot be effectively invoked in an ordinary action commenced by a Writ of Summons; that it was the intention of the said Constitution to provide a speedy and effective remedy for the enforcement and protection of the fundamental rights of citizens and that the High Court accordingly has jurisdiction in an appropriate case to grant an injunction to prevent violation of fundamental rights.

- 10 17. The Appellant will admit and contend that in view of the lapse of time an injunction is no longer appropriate. The Appellant respectfully submits that the case should now be remitted to the High Court of Guyana for such Court to give such directions and to make such orders as may be necessary for the protection or enforcement of the fundamental right of the Appellant to payment of prompt and proper compensation for the compulsory
20 acquisition of the land in question and that the Respondent be ordered to pay the Appellant's costs of this appeal and of the Appellant's costs in the Court of Appeal in the High Court for the following (amongst other)

R E A S O N S

1. BECAUSE the High Court of the Supreme Court of Judicature, Guyana, had jurisdiction to hear the Appellant's Motion upon the merits
- 30 2. BECAUSE Originating Notice of Motion was the or a proper method by which to apply to the said High Court for the exercise of its jurisdiction under Article 19 of the Constitution of Guyana.
- 40 3. BECAUSE the said High Court had authority, power and jurisdiction to grant an injunction to restrain the Government of Guyana and/or its officials, servants or agents from taking possession of any of the said land without promptly assessing and/or paying adequate or any compensation.
4. BECAUSE the said High Court had full authority, power and jurisdiction to grant the other relief sought by the Appellant

in her Originating Notice of Motion and of granting such further or other relief and the High Court saw fit.

5. BECAUSE the said High Court should have heard and determined the Appellant's Motion upon its merits.
6. BECAUSE the said Court of Appeal should have ordered the said High Court to hear and determine the Appellant's Motion on its merits 10
7. BECAUSE the Government of Guyana had compulsorily taken possession of and acquired land as aforesaid and had not promptly or at all paid compensation to the Appellant and denied the right of the Appellant to compensation in respect thereof.
8. BECAUSE the Appellant was entitled promptly to be paid proper compensation by the Government of Guyana in respect of their said appropriation of the said land. 20
9. BECAUSE the reasons given in their judgments by Luckhoo and Cummings J.J.A. as to whether Originating Notice of Motion was a proper procedure and the reasons given in the judgment of Cummings J.A. that the High Court had jurisdiction to grant the relief claimed.

(D. J. TURNER-SAMUELS)

No. 35 of 1969

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O N A P P E A L

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B E T W E E N

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(Applicant)
Appellant

- and -

THE ATTORNEY GENERAL OF GUYANA

(Respondent)
Respondent

CASE FOR THE APPELLANT

GASTER, VOWLES, TURNER & LOEFFLER,
292, HIGH HOLBORN,
W.C.1.
Appellant's Solicitors.