

17, 1969

IN THE PRIVY COUNCIL

No.15 of 1968

ON APPEAL
FROM THE COURT OF APPEAL OF THE WEST INDIES
ASSOCIATED STATES

BETWEEN:

ROSWELL WILLIAMS Appellant

-- and --

THE GOVERNMENT OF THE ISLAND OF SAINT LUCIA Respondent

C A S E FOR THE RESPONDENT

Record

10 1. This is an appeal against the judgment and Order of pp.37-78,
the Court of Appeal of the West Indies Associated 79
States Supreme Court (Lewis C.J., Gordon and Lewis
JJ.A.) dated the 18th November, 1967 dismissing
with costs the Appellant's appeal against an award
made by a Board of Assessment on the 21st March, pp.31-32
1967 whereby the Appellant was award \$61,050 in
respect of the compulsory acquisition on the 28th
December, 1963 by the Respondent of the Ventine
Estate, Saint Lucia.

20 2. The relevant legislation is:

Land Acquisition Ordinance, Cap. 109 of the Laws
of St. Lucia.

3. (1) If the Governor 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 this section and
the declaration shall be conclusive evidence that
the land to which it relates is required for a
public purpose.

30 (2) Every declaration shall be published in two
ordinary issues of the Gazette and copies thereof
shall be posted on one of the buildings (if any)
on the land or exhibited at suitable places in the

CASE FOR THE RESPONDENT

Record

locality in which the land is situate, and in the declaration shall be specified the following particulars in relation to the land which is to be acquired:-

- (a) the parish or district in which the land is situate;
- (b) a description of the land, giving the approximate area and such other particulars as are necessary to identify the land;
- (c) in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;
- (d) the public purpose for which the land is required.

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(3) Upon the second publication in the Gazette the land shall vest absolutely in the Crown.

(4) Nothing in this section shall be deemed to prevent the acquisition of lands for public purposes by private treaty.

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4. If it appears to the Governor in Council that any land is likely to be required for any purpose which, in the opinion of the Governor in Council, is a public purpose and it is necessary to make a preliminary survey or other investigation of the land, he may cause a notification to that effect to be published in the Gazette and thereupon it shall be lawful for the authorised officer (and his agents, assistants and workmen) to do all or any of the following things, that is to say:

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p.20 1.15

3. The land in question was called the Ventine Estate, in the Quarter of Soufriere, St. Lucia, of some 63 acres, and was acquired by the Appellant for a total price of \$27,205 by a deed dated the 23rd December, 1963, after negotiations lasting from the 20th May, 1963. The Appellant had then been a contract Government official, as Development Secretary of St. Lucia, but had terminated his contract after being refused permission to acquire the estate.

p.21 1.25

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On the 21st and the 28th December, 1963, there was published in the St. Lucia Gazette the following declaration:

"IN THE MATTER OF THE LAND ACQUISITION ORDINANCE pp. 1-2
CHAPTER 109

AND

10 In the Matter of a Declaration by the Administrator in Council that certain lands situate in the Quarter of Soufriere in the Island of Saint Lucia, are to be acquired for a public purpose.

DECLARATION OF ACQUISITION OF LAND

WHEREAS it is enacted by section 3 of the land Acquisition Ordinance, Chapter 109 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;

20 AND WHEREAS it is considered by the Administrator in Council that the land mentioned and described in the Schedule hereto should be acquired for a public purpose, to wit, the development of tourism;

30 NOW THEREFORE, IT IS HEREBY DECLARED by the Administrator acting in accordance with the advice of the Executive Council that upon the Second Publication of this Declaration in the Gazette, the land mentioned and described in the Schedule hereto shall be acquired for the above mentioned purpose and shall vest in the Crown.

SCHEDULE

[a description of the land]

Dated this 20th day of December, 1963

Signed: U. Raveneau

Clerk of the Executive Council."

4. The Appellant, by a letter dated the 4th January, 1964, protested at the compulsory purchase,

Record

- p.20 1.36 and by a letter dated the 20th March, 1964 claimed compensation of an amount of ~~£~~9,162,560 for the compulsory acquisition. This claim was refused in a letter of the 20th January, 1965 from the Acting Attorney General, who offered compensation of ~~£~~40,000. On the
- p. 21 1.38 31st July, 1965, the Appellant was paid ~~£~~40,000 as interim compensation. On the 19th February, 1966, in the absence of agreement over the amount of compensation, a Board of Assessment was set up under the Land Acquisition Ordinance (hereinafter called "the Ordinance"). The Board of Assessment (Mr. Justice Bishop and Mr. E.R.L. Ward) sat on the 3rd May, 1966, when the Appellant made a preliminary objection to the jurisdiction of the Board. 10
- pp. 11-17
- pp. 11-14 The ground of objection was that the Declaration published in the Gazette had not been made in the proper statutory form, and that accordingly there had been no valid compulsory acquisition. After hearing argument, the Board overruled the objection, and decided that the Declaration was valid, since it contained all the particulars required by section 3 of the Ordinance. 20
- pp. 15-17 The Board therefore proceeded, between the 17th and 21st January, 1967, to hear a considerable body of evidence called by both sides as to the proper value to be attributed to the land acquired.
- pp. 31-32 5. By an award dated the 21st March, 1967, the Board of Assessment awarded the Appellant a total of ~~£~~61,050 in full satisfaction of his claim in respect of the compulsory acquisition of the Ventine Estate. He was also awarded two-thirds of his costs. The Board of Assessment gave detailed reasons for arriving at the compensation figure, in which it fully considered the evidence which it had heard. 30
- pp. 19-30 The Appellant had sought to establish a value of ~~£~~9,162,560 on the basis that the natural energy in the land would support a power station, that a mineral water industry could be established, that part of the land was ripe for housing development, and that there were valuable mineral deposits. The Board rejected these claims, either in full or to a large extent, upon the conclusions it reached upon the evidence.
- pp. 28, 28 40

6. The Appellant appealed to the Court of Appeal

to have the award of the Board of Assessment set aside upon the ground that the Board had had no jurisdiction to make the award for the reason that the Declaration, upon which the compulsory acquisition was based, had not been made in accordance with the Ordinance, and was consequently null and void, which in turn rendered the compulsory acquisition null and void.

pp. 33-35

10 7. The Appellant's appeal was heard by the Court of Appeal (Lewis C.J., Gordon and Lewis JJ.A) between the 3rd and 5th October 1967 and judgment was given on the 18th November, 1967 dismissing the appeal with costs.

p. 79

20 Lewis C.J. began his judgment by stating that he agreed with the judgments to be given by the other members of the Court; the first argument on behalf of the Appellant had been that the Declaration of Acquisition was a statutory instrument and that it was invalid because the enacting part of the documents did not refer to the decision of the Administrator in Council to acquire the land; this argument failed because the premise was invalid; the Declaration did not have statutory effect, but was merely the prescribed means of recording an administrative decision; the transfer of title to the land was effected by the Ordinance, and by any enacting force in the Declaration. The second argument was that it was not stated in the Declaration that the land was "immediately required" for a public purpose, but this was not a requirement of the Ordinance; all the matters required to be specified in the Declaration had been expressed, and the Declaration was therefore valid and effective.

pp. 37-41

30 40 Gordon J.A. in his judgment, began by setting out the award of the Board of Assessment, the relevant statutory provisions, and the Declaration of Acquisition; the Declaration, although required by the Ordinance, was only a means of expressing an administrative decision, and did not have to be construed as if it were a statute; it should be construed as a whole, and the 'public purpose' referred to in the third paragraph could only refer to the particular public purpose expressly stated in the second paragraph; further, the statute, in section 3(1), expressly provided that the publication of a Declaration should be conclusive evidence that the Governor in Council had decided that the land was required for a public purpose. It

pp. 43-54

had further been argued for the Appellant that the wording of the Declaration indicated that the land was to be acquired in the future, which was the meaning or purpose of the Ordinance; however the acquisition occurred upon the second publication in the Gazette which was the reason for the language in the Ordinance. The Appellant had also argued that the Declaration should have contained evidence of the decision by the Governor in Council to acquire the land; the authorities relied upon in support of this argument were distinguishable on the ground that in the present case the Ordinance itself laid down a scheme for publication of the Governor's decision; the Declaration had contained all that section 3 of the Ordinance required; there was no evidence of excess of jurisdiction by the Governor in Council nor any averment of bad faith; the Declaration was of full force and effect, and the action of the Board subsequent to it was in order.

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pp. 55-78

8. Lewis J.A. began his judgment by referring to the Ordinance, the Declaration, the preliminary objection taken before the Board, and the Board's ruling upon it; the present appeal was confined to the question raised, as to whether the Board had had jurisdiction to make the award. The learned judge then set out at length the Appellant's submissions; it was accepted by the Respondent that section 3 of the Ordinance was mandatory, and that failure to comply with it rendered a compulsory acquisition, and any proceedings of the Board of Assessment, void. It had been argued that the essence of the Ordinance was that land should be "immediately required" for a public purpose, and that the Declaration should have so stated, but the language of the Ordinance did not have that effect, and ought not to be so interpreted; section 4 of the Ordinance dealt with a different situation and was not relevant. It had next been argued that the decision of the Governor in Council to acquire the land should have been embodied in an order in Council, and reliance had been put on Mackay v. A.G. for British Columbia (1922) 1 A.C. 457 and Musson v. Rodriguez (1953) A.C. 530, but these cases could be distinguished; they were concerned with the need for a written record of an executive decision in certain cases, but not with the form such a record should take; in the present case section 3(1) of the Ordinance prescribed the

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manner in which the Governor in Council's decision should be published, namely in a Declaration, which had been done. Such a declaration was not a statutory enactment, and did not have to be construed as one; there was more than one kind of order in council, and what was necessary was to comply with the Ordinance. Here the Declaration did comply with the Ordinance, and contained the necessary particulars, including the fact that the Governor in Council had decided to acquire the land at the time when the Declaration was made. The Declaration was valid, and the Board of Assessment had had jurisdiction to make its award.

9. The Respondent respectfully submits that the judgments of the Court of Appeal were correct and that this appeal should be dismissed.

The jurisdiction of the Board of Assessment to make their award is being challenged upon a narrow ground, namely that the Declaration of Acquisition was not in a proper form. This question must turn upon the proper construction of section 3 of the Ordinance, which, it is submitted, was fully complied with in the present case. A Declaration under section 3 is not a statutory instrument or otherwise within the definition of a statute, but a publication of an administrative decision, and should be interpreted accordingly. The Declaration in the present case contained all the particulars required by the Ordinance, and there was no need for the separate publication of the decision of the Administrator in Council to acquire the land in question.

It is submitted that the Declaration, in its statutory framework, clearly showed that the land was to be acquired forthwith, although such a requirement is not necessary under the Ordinance, and further showed that the land was required for a specified public purpose.

10. The Respondent respectfully submits that this appeal should be dismissed with costs and the judgment and order of the Court of Appeal should be affirmed for the following, among other

R E A S O N S

- (1) BECAUSE the Declaration of Acquisition was valid in form and content.

Record

- (2) BECAUSE the Declaration of Acquisition complied in all respects with Section 3 of the Ordinance.
- (3) BECAUSE the compulsory acquisition of the Appellant's land was validly carried out.
- (4) BECAUSE the Board of Assessment had jurisdiction to make its award.
- (5) BECAUSE there are no grounds upon which the award of the Board of Assessment can be challenged.
- (6) BECAUSE of the other reasons in the unanimous judgments of the Court of Appeal.

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MERVYN HEALD

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C A S E F O R T H E R E S P O N D E N T

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