Privy Council Appeal No. 46 of 1982

Nellie Evelyn Crichlow (Widow) and Others *Appellants*

v.

The Attorney General of Trinidad and Tobago *Respondent*

FROM

THE COURT OF APPEAL OF TRINIDAD AND TOBAGO

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 11TH JANUARY 1984

Present at the Hearing:

LORD DIPLOCK
LORD WILBERFORCE
LORD KEITH OF KINKEL
LORD ROSKILL
LORD TEMPLEMAN

*[Delivered by **Lord Templeman**]*

This appeal is the ultimate resolution of a dispute which has been bedevilled by inexplicable and inexcusable delays.

In 1952 Henry Edward Crichlow claimed to be entitled in fee simple in possession to a strip of land ("Crichlow's land") comprising 90 perches with a frontage on the west to Wilson Street (sometimes called Plymouth Road) and extending east to the Crown Botanic Station in the parish of St. Andrew Tobago. By a lease dated 22nd September 1952 the Government of Trinidad and Tobago leased to the oil company Texaco (Trinidad) Limited, then Shell Leaseholds Distributing Company Limited, an area of 1 acre 3 roods 34 perches. The land leased to the oil company purported to include 20 perches ("the disputed 20 perches") situate in the centre of Crichlow's land. The oil company installed oil tanks on the disputed 20 perches and erected a fence along the western boundary. In the result Crichlow's land was divided into three areas. The first part was an area of 34 perches between Wilson Street and the western boundary of the disputed 20 perches. The second part consisted of the disputed 20 perches from which Crichlow was excluded. The third part consisted of 36 perches to the east of the disputed 20 perches and to which Crichlow could no longer obtain access.

By a letter dated 12th March 1953 the Warden confirmed to Crichlow that the disputed 20 perches had not been compulsorily acquired by the Government. Crichlow wrote to the oil company demanding rent and damages and he was referred to the Government which had granted the lease to the oil company. Crichlow died intestate on 13th December 1954, letters of administration of his estate were granted to his widow on 24th August 1962 and in the same year Crichlow's land was vested in the appellants.

On 16th June 1966 the appellants issued the writ in these proceedings in the High Court of Trinidad and Tobago claiming against the oil company possession of the disputed 20 perches and mesne profits. In 1967 the respondent Attorney General of Tobago representing the Government of Trinidad and Tobago was joined as a defendant. In 1971 the Government compulsorily acquired Crichlow's land other than the disputed 20 perches. On 10th May 1972 the appellants applied for judgment against the Attorney General in default of defence and on 19th May 1972 Rees J. made a consent order in favour of the appellants and against the Attorney General for possession of the disputed 20 perches "....and mesne profits from the year 1958 until delivery of possession -such mesne profits to be assessed by a judge in chambers".

In 1978 Braithwaite J. heard evidence on behalf of the appellants and on 1st December 1978 delivered a reasoned judgment whereby he awarded the appellants mesne profits in the sum of $240,000 with interest at the rate of 6% per annum from January 1958 to the date of the award. On 21st May 1981 the Court of Appeal of Trinidad and Tobago reduced the award to $26,100 and interest. The appellants appealed to the Board seeking to restore the award of Braithwaite J.

In view of the inordinate delays which have taken place it is not surprising that the evidence tendered on the hearing by Braithwaite J. of the inquiry as to damages was vague and uncertain. Mr. George Crichlow gave evidence that the Crichlow family had farmed the Crichlow land and made $5,000 to $6,000 per annum from rearing and selling pigs, goats and cows, mainly piglets. He estimated that this profit would have increased from between $2,000 and $3,000 after 1946. He did not produce any accounts relating to the farming business for the years immediately preceding 1952 or for any other years. He did not say how much of the profit was attributable to the disputed 20 perches and to the portion of Crichlow's land to which access could not be gained after the oil company took possession of the disputed 20 perches. He did not explain whether and to what extent the unpaid labour of the members of the Crichlow family contributed to the profit figures.

In his judgment delivered on 1st December 1978 Braithwaite J. ignored the evidence of the appellants' farming business because from 1958 onwards Government regulations made pig farming illegal in the area of the Crichlow land. Instead the learned judge relied on the casual remark by Mr. Crichlow that "18,500 sq. ft. would have in these days brought about $1,000 per month. Rent for commercial properties have increased about 12% per annum since then.....". It did not appear that Mr. Crichlow had any qualifications for making this assertion and there was no evidence that the Crichlow land with its awkward shape and narrow frontage could have been let for commercial purposes. It is true that the Crichlow land or part of it now forms part of a post office, bus terminal, library and market, but those circumstances do not prove anything about the possible commercial letting of the Crichlow land from 1952 onwards.

The Court of Appeal could make nothing of Mr. Crichlow's assertion about the commercial letting of 18,500 sq. ft. and fell back on his estimate of farming profits which they overgenerously accepted at $9,000 per annum without distinguishing any part of the Crichlow land which was available to the appellant, even after the occupation of the disputed 20 perches, without considering the effect of the Government regulation which made pig farming illegal after 1958, and without making any allowance for the possible optimism and faulty memory of the witness or for the cost of the family labour on the farm. But if the Court of Appeal was overgenerous to the appellants in accepting that the appellants had been deprived of the use of land worth $9,000 per annum, the Court of Appeal fell into the opposite error by assessing damages by reference to one-fifth of the farming profits on the ground that the disputed 20 perches formed only one-fifth of the Crichlow land. This approach did not take into account, as it should have taken into account, the 36 perches to which the appellants were denied access. In the result the Court of Appeal assessed damages at $26,100 for the 14½ years from 1st January 1958 until 30th June 1972.

Their Lordships are satisfied that no reliance can be placed on the assessment of Braithwaite J. because there was no evidence that the Crichlow land, or any part of the Crichlow land, could have been let for commercial purposes. The lamentable delays which have occurred preclude a retrial of the damages issue. Allowing for the errors of generosity and the errors of underestimate made by the Court of Appeal their Lordships are not prepared to interfere with the award of the Court of Appeal. The appellants have wholly failed to demonstrate from the evidence that any higher figure for damages than $26,100 was justified.

The appellants further submitted that damages ought to have been awarded from 1952 and that the reference in the consent order to 1958 was a clerical error. Their Lordships agree with Braithwaite J. and the Court of Appeal that, in the absence of any application to the judge who made the consent order, an application now too late to be entertained, damages can only be awarded in conformity with the express terms of the consent order, that is to say from 1958.

The appellants further submitted that damages ought to have been awarded until 1976 when, it was said, the oil company yielded up possession of the disputed 20 perches. It appears however that the disputed 20 perches, and indeed the whole of the Crichlow lands, were compulsorily acquired not later than 1971 and in these circumstances, the order of the Court of Appeal ought not to be disturbed.

The appellants have demonstrated that the Court of Appeal erred in considering the direct damage to the disputed 20 perches without also taking into account the consequential damage to the 36 perches which were denied to the appellants by the oil company's occupation of the disputed 20 perches. The appellants have, however, failed to demonstrate that the Court of Appeal reached the wrong conclusion as to the amount of damages. In these circumstances the appeal will be dismissed but there will be no order in respect of the costs of the appellants or of the Attorney General of the appeal to the Board.