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10/4/76
CC-Civil

NO. 2/74

IN THE GRAND COURT OF THE CAYMAN ISLANDS

In the matter of the Land Acquisition, Chapter 81

Between:

The Jamaica Presbyterian Corporation

Applicant

And: The Government of The Cayman Islands

Respondent.

Reasons for Judgment

On July 25, 1974 the Governor, following an inquiry whereat witnesses gave testimony, made an award of \$70,566.00 in favour of the applicant for compensation for land acquired by the respondent. The applicant, not being satisfied with the amount of compensation, has now required the Governor to refer the matter to this Court for determination of the objection.

Section 20 of the Land Acquisition Law, Cap. 81, characterises the hearing in this Court as an inquiry and requires the proceeding to take place in open Court. It is not referred to as an appeal. In my view, the nature of this inquiry is by way of rehearing. Counsel for both parties have agreed that the transcript of the evidence at the inquiry before the Governor forms the evidence at the hearing in this Court. I do not consider that I am exercising an appellate jurisdiction.

Section 21 (a) of the Land Acquisition Law requires the Court to take into consideration, in determining the amount of compensation for land acquired under that Law, the market value of the land at the date of the publication of the declaration that it was needed for a public purpose.

The first main ground of objection is that the Governor erred in concluding that building potentialities should not be taken into account in determining the market value of the land.

The Governor, in stating the grounds on which the amount of compensation was determined (as required by Section 18 of the Law), said:

"As to (iii) above - should potentialities and especially building potentialities - be taken into account - I felt that a very great deal of evidence was adduced in support of the propositions that, in general, potentialities should be considered, and that they should not. It seemed to me, considering the precedents as best I could and bearing in mind especially the local law, that there was perhaps a better case for the view that they should not. Yet in the circumstances this did not completely satisfy me I decided to answer the general question with a conditional "Yes", and to see what evidence could be pro

I could not, however, accept that building potentialities should be taken into account. There is a possibility; I felt it would be wrong to exclude it altogether from my consideration. But it is entirely hypothetical, and the contention (for which there appears to be sound warrant) that compensation for the land as building land cannot be granted unless on 7th November, 1973 it was in all respects ripe for building seems to me to be wholly sensible"

The Governor in his statement speaks of a hypothetical possibility that the building potentialities of the land should be considered only where the land was in all respects ripe for building. In my opinion, the Governor has erroneously instructed himself in the Law. The correct view on this subject is expressed in Maori Trustee v. Ministry of Works (1958) 3 All. E.R. 336 where Lord Keith of Avonholm said (at p.p. 339 to 340):

There are, however, as has frequently been observed, cases where land has a potentiality which may be realizable in the foreseeable future and, if so, will give the land an added value over and above its value for the uses made of it at the time of taking.

Essentially the same view is expressed by Lord Romer in Sri Raja Vyricherla Narayana Grajapatraju Bahadur Garu v. Revenue Divisonal Officer, Vizagapatam (1939) 2 All. E.R. 317, where he said, at p.p. 321, 322:

.... it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future. No authority, indeed, is required for this proposition. It is self-evident one. No one can suppose, in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes, but which at the valuation date is waste land, or is being used for agricultural purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land, as the case may be. It is plain that in ascertaining its value the possibility of its being used for building purposes would have to be taken into account. It is equally plain, however that the land must not be valued as though it had already been built upon, a proposition that is embodied in sect. 24 (5) of the Act and is sometimes expressed by saying that it is the possibilities of the land, and not its realised possibilities, that must be taken into consideration."

The land acquired by the respondent in this case is what is known as iron-shore. It is located in the harbour area immediately adjacent to the commercial core of George Town. It is a low-lying rugged, pitted coral formation without protective beach or reef. It is directly exposed to the infrequent heavy seas caused by a non-prevailing nor'wester. At the date of declaration the land was essentially unimproved. In order to make it suitable for building purposes a protective sea wall along the shore would have to be constructed, and the land itself would have to be raised by fill some 5 to 8 feet.

The property is bounded on the east (being 70 ft.) by N. Church St., and on the west (being 74.4 ft.) being roughly parallel to the sea. The area is 11,761 Sq. Ft. The applicant has a long established church building on property immediately across N. Church St. At the time of declaration a church hall was under construction. The applicant had intended to use the land acquired for parking purposes.

Prior to the declaration of Nov. 7, 1973, the parties conducted negotiations. The Government offered to purchase the property at \$6.00 per sq. ft. By letter dated September 26, 1973 the applicant sought to retain 60 ft. easterly portion of the property next to N. Church St. for parking purposes, and proposed selling to the Government the remaining portion of the land west to the seashore at the price offered of \$6.00 per sq. ft. This was after the applicant had obtained Mr. Coatsworth's valuation of July 17, 1973 of the two parcels at \$14.00 per sq. ft. This valuation was subject to the qualification that the parcel ultimately acquired "would have to be raised and probably have a protective sea wall along the shore in order to ensure greater safety at times of heavy nor'westers."

By letter of July 16, 1973 the applicant had offered to sell the entire parcel ultimately acquired at \$18.00 per sq. ft.

By letter of Feb. 1974 the applicant offered to sell at \$19.00 per sq. ft.

By statement required under section 9 of the law the applicant claimed compensation for market value at \$14.00 per sq. ft. plus further compensation by reason of injurious affection or alternatively by reason of severance at \$14.00 per sq. ft. making a total claim of \$28.00 per sq. ft. or \$269,308.00.

The Governor made an award of \$70,566.00 for compensation for the land, precisely \$6.00 per sq. ft. It is implicit in the Governor's statement given under Section 18 that he disregarded the evidence of Mr. Crighton. Upon a reading of this witness' evidence, I am in respectful agreement with the Governor. From a careful reading of the evidence of Mr. Coatsworth it is clear that he places a market value on the acquired parcel of up to \$600.00 per lineal sea foot as the property then existed without raising it by fill and protecting it by a sea wall. I accept this valuation. I do not accept his valuation of \$14.00 per sq. ft. if the parcel were improved to the state where a building could be erected upon it. This requires raising a protective sea wall, planning permission and insurance. A valuation of \$600.00 per lineal sea foot is approximately \$3.80 per sq. ft.

I accept the evidence of Mr. Heber G. Arch that the cost of building a sea wall and of filling would be approximately \$17,000.00. If this is added to Mr. Coatsworth's valuation of \$3.80 per sq. ft. the total is still less than the award of \$6.00 per sq. ft. Mr. O. Panton's valuation of \$5.50 per sq. ft. takes into consideration the necessity of a sea wall, and fill, if the land were to be used

From the foregoing it is clear that the applicant was during the negotiations prepared to accept \$6.00 per sq. ft. for at least a portion of the parcel acquired. All of the valuations that I have accepted do not exceed the award of \$6.00 per sq. ft. All of these valuations take into account (although the Governor apparently did not) the added value of the land - over and above its value for the use made of it at the time of taking - having a potentiality for a building site which may be realizable in the foreseeable future. In my opinion, the award of the Governor, on the facts, and having regard to the land's realisable potentiality, was generous. By Section 23 this Court cannot make an award less than the amount awarded by the Governor.

The second main ground of objection is that the Governor erred in finding that the applicant had not suffered loss by reason of the severance of the acquired parcel from the main parcel occupied by the church and hall. Section 21 (c) of the Law requires the Court to take into consideration:

"(c) any damage sustained by the person interested, at the time of the taking possession of the land, by reason of severing such land from his other land;"

In his statement the Governor said, "The Jamaica Presbyterian Corporation has not suffered major loss by virtue of the severance of part of its land." With respect, this is a mis-statement of law; for the sub-section quoted requires "any damage sustained" to be taken into consideration (be it large or small), not just major loss.

I find that the applicant had intended to use the acquired parcel for parking purposes. Counsel for the applicant submits that because of the severance this use is now denied, and this will cause damage. The Honourable Attorney-General, for the respondent, replies that "any damage sustained" is damage sustained at the time of acquisition, as the section does not employ the future tense. It is pointed out that Section 63 of the Land Clause Act of 1845 (U.K.) employs the words "damages to be sustained", thereby denoting not just present damages but also future damages. In my opinion the point is academic; for once the intention to use the property for parking purpose is found this results in a present loss to the applicant. The intention was a present one: this is borne out by the fact that the approval by the Planning Board for the construction of the church hall dated Sept. 1, 1972 is based on an application stating "space for parking can be provided on church owned property on the west side of Church Street." Furthermore, the approved plans state, "Subject to providing car park."

The witness Mr. Heber G. Arch testified that about 6075 sq. ft. of space is required for parking for the hall, to accommodate 27 cars. He testified that a space of about 9000 sq. ft. to the south of the church - an old graveyard - would be enough parking space for the church itself; and that there was very little, if any, space available on the east side for parking space for the hall. I accept this evidence. The Attorney-General submits that the loss of the acquired property does not result in any real loss to the applicant as the Church can still provide adequate parking space on the remaining land.

This argument however overlooks the fact that the church had intended to use the acquired parcel for parking and not to use an existing but old graveyard for this purpose. To follow the latter course would cause hurt and protest. In my view, damage was sustained by the applicant at the very time of taking of the land by reason of severance. An award for this damage must be made in addition to the award representing the market value of the acquired parcel.

There is very little evidence on this question: however a determination must be made. What then is the measure of damage to the applicant for the loss of parking which by reason of the severance must be found on the remaining property, found elsewhere, or done without? The applicant's remaining property still remains viable as a church and hall, but the parking potential to be provided by the applicant is considerably reduced. I fix this damage in the sum of \$10,000.00.

Pursuant to Section 24 of the Law, the amounts awarded under Section 21 are as follows:

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| 1. Under paragraph (a) | - | \$70,566.00 |
| 2. Under paragraph (c) | - | \$10,000.00 |

The Governor shall pay the applicant's costs to be taxed. The applicant shall have interest at 6% per annum on \$10,000.00 from the date the Governor took possession to the date of payment of the said \$10,000.00 into Court.


James K. Shaw, Acting Judge.

April, ¹² 41th 1976.

Counsel for Applicant:
Truman Bodden, Esq.

Counsel for Respondent:
Gerald Waddington, Esq. Q.C.,
Attorney-General.