

IN THE COURT OF APPEAL OF SEYCHELLES

GOVERNMENT OF SEYCHELLES

AND

THE ATTORNEY GENERAL

APPELLANTS

vs

CHARLES ALFRED PAUL MOULINIE

RESPONDENTS

SCA 16 of 2012

=====

Counsel: Ms.Alexandra Madeleine for Appellants
Mr Philippe Boullé for Respondent

JUDGMENT

DOMAH, S.,

[1] Respondent is the Executor of the estate of late Michel Paul Moulinie who in his life time had made a timely application to the government under section 14(1) of Part III of Schedule 7 of the Constitution for constitutional redress with respect to all his properties which had been compulsorily acquired by government on 1 December 1980. The negotiations went on for 14 years without the respondent having obtained satisfaction. Finally, on 5 August 2011, he brought an action before the Constitutional Court which ordered the return of three of the properties and ordered compensation for the rest. The property for which there was an agreement for part return and part compensation was PR13, situated in Praslin. Judgment was entered as per agreement reached. The other parcels on which there was dispute were. V5317, V5318, V5319 and V5320. With regard to 5317, the court found that the property was subdivided into 3 plots V7121, V7122 and V7123, for which there has been no serious insistence by the respondent for their return. However, he sought full compensation for same. The Court found, with regard to parcel V5318 that this property was developed at the time of acquisition but had not been further developed by government. With regard to parcel V5319, it found that it had been in 1989 transferred to Seychelles Industrial Development Corporation

but, in 2008, the entity returned it to the Government. At the date of the hearing, it emerged that a large construction was being put up and had come off the ground, the continuing of which was stopped by an order of injunction. With regard to parcel V5320, it found that the property, stated to have remained undeveloped by the respondent is being used as a multipurpose court for the benefit of the community. The Constitutional Court ordered that all the 3 properties: the agreed parts of V5317 and the whole of V5318, V5319 and V5320 be returned to the respondent.

[2] With regard to the compensation it decided that there should be proper evaluation of the properties before it could be paid inasmuch as the figures looked to be unsupported by expert evidence.

GROUND OFS OF APPEAL

[3] Government and the Attorney General (the appellants) have appealed against that decision on the following grounds:

(1) the Constitutional court erred in its appreciation and consideration of the facts of the case in holding that parcels V5318, V5319 and V5320 were available for return to the Respondent because:

a. some compensation in the total sum of SCR1.95m million had been paid to the Respondent for the acquisition of the properties under the Lands Acquisition Act, 1977;

b. at the time of the application under section 14 of Part III Schedule 7 to the Constitution –

(i) parcel V5319 was developed and had been transferred to the Seychelles Development Corporation for its redevelopment and therefore was not available for return;

(ii) parcel V5318 was developed into a multi-purpose court for use by the community at the time and therefore was not available for return;

(iii) parcel V5320 was developed and was being used for accommodation of the 1st appellant's expatriate workers and therefore not available for return;

c. following the Respondent's application under section 14 of Part III Schedule 7 to the Constitution, negotiations between the 1st Appellant and the Respondent proceeded on a monetary basis;

d. at the time of filing of the petition in the Constitutional Court –

(i) parcel V5319 had been leased to the Seychelles Pension Fund for a commercial development which was underway

as witnessed by a copy of the said lease agreement which had been annexed to the Affidavit in support of the Reply to the Petition as Annex W.

- (ii) parcel V5320 was still being used as a multipurpose court by the community;*
- (iii) parcel v5318 was still being used for the accommodation of the 1st appellant's expatriate workers.*

2. The constitutional Court erred in ordering the return of the acquired properties or remainder undeveloped part thereof on payment of monetary compensation in respect of the acquired properties or part thereof that had been transferred to third parties without considering the compensation that had already been paid under the Lands Acquisition Act, 1977.

3. The Constitutional Court erred in holding that parcels V5318, V5319 and V5320 were undeveloped at the time of the filing of the application under section 14, Part III Schedule 7 to the Constitution and was therefore available for return because compensations had been paid under the Lands Acquisition Act, 1977 and the said properties were developed as stated under ground (1)d.

4. The Constitutional Court erred in holding that Appellant failed to convey to the Court the actual status quo of land parcels V5319 in that a copy of the lease agreement between the Republic and Seychelles Pension Fund was annexed to the Affidavit in support of the Reply to the Petition as Annex W.

5. The Constitution Court erred in holding that the Appellant had ignored options (1)(2) and (3) which it was obliged to consider first in priority before jumping to option 4 to tell the Respondent that he is entitled to only monetary compensation because it failed to consider that monetary compensation has been paid under the Lands Acquisition Act, 1977 and the properties were developed. into and used as multipurpose court by the community and was therefore not available for return.

6. The Constitutional court erred in holding that no evidence had been adduced that parcel V5319 had been developed or in any case was developed at the time of receipt of the application of the Respondent because it was deponed in the Affidavit in support of the Reply to the Petition that parcel V5319 was developed, transferred to Seychelles Industrial Development Corporation in 1989 for a redevelopment project and subsequently leased to Seychelles Pension Fund for a commercial development and the lease agreement was annexed to the said Affidavit as Annex W.

7. The Constitutional Court erred in law in holding that since V5319 was transferred back to the government in 2008 it was available for return because it failed to consider the operative words of section 14(a) of Part III Schedule 7 to the Constitution namely: "on the date of receipt of the application" and that the said parcel V5319 was subsequently leased to the Seychelles Pension Fund for a commercial development.

8. The Constitutional Court erred in rejecting the Appellants contention that the facts of the present appeal were distinguished from the facts of the case of Atkinson v the Government of Seychelles and the Attorney General SCA1/2007.

9. The Constitutional Court erred in holding that in all cases where land has not been developed by the government between the date of compulsory acquisition and date of receipt of the application for return under section 14(1)(a), such land must be returned to the former owner because it fails to make a distinction between cases where the bare ownership in land was acquired and cases where developed land was acquired and put to use.

10. The Constitutional court erred in holding that land parcel V5320 was not developed and merely used as a multipurpose court because the said V5320 was developed and used as such.

[3] The Appellants have moved, therefore that the decision of the Constitutional Court ordering the return of parcels V5318, V5319 and V5320 to the Respondent be quashed. The reasons the appellant have given are apparent in the grounds of appeal.

[4] Appellants seek, accordingly:

a declaration that compensation having been paid under the Lands Acquisition Act, 1977 in respect of all the acquired properties, the Respondent is only entitled to a review of the monetary compensation paid to be calculated at the market value of the properties as at June 1993 or such other value as may be agreed upon between the parties less the sum of SR1.95 million paid in respect of the same properties under the said Lands Acquisition Act, 1977;

a declaration that on the date of receipt of the application under section 14 of Part III Schedule 7 to the Constitution, V5319 was not available for return as it had been transferred to the Seychelles Development Corporation and that parcel V5320 was developed and used as a multipurpose court by the community and was, therefore, not available for return;

a declaration that the Respondent is entitled to monetary compensation in respect of parcels V5318, V5319 and V5320 to be calculated at the market value of the properties as at June 1993 or such other value as may be agreed upon between the parties less the sum of SR1.95 million paid in respect of the same properties under the said Lands Acquisition Act, 1977.

GROUND OF CROSS APPEAL

[5] The respondent have cross-appealed against the decision and put up the following grounds:

1. *The Constitutional Court erred in awarding compensation to the Respondent for the land sold by the 1st Respondent based on the market value as at the coming into force of the Constitution on 21st June 1993.*
2. *The Constitutional Court failed to take into consideration the violation of the Respondent's constitutional right to ownership of the property sold to the third parties, which should attract compensation outside the scope of compensation for developed land in respect of which the State's obligation may be limited to payment of compensation valued as at the date of coming into force of the constitution.*
3. *The finding of the Constitutional Court that there was no proof of the value of the property failed to take into consideration the best evidence available on such value found in the admission of the Appellants on the pleadings before the Constitutional Court.*
4. *The finding of the Constitutional Court that the petitioner had not proved the losses and damages claimed in the petition, failed to take into account the best evidence available to support the claim found in the admission of the Appellants on the pleadings before the Constitutional Court.*

[6] In our view, this appeal involves the determination of three key issues. The first is the purport of section 14(a) of Part III Schedule 7 to the Constitution and whether the payment of compensation debars an applicant from applying for a return of his land for which he has received some compensation; the second is the meaning of development as envisaged by the law on state acquisition of property; and the third, where the manner in which the quantum of compensation should be assessed under the law.

COMPENSATION: IS IT A BAR TO RETURN?

[7] What the respondent has been claiming in this case is the return of the lands on which he has taken the view there has been no development. We need to state here that we are using the word return for the sake of simplicity. The section itself speaks of transfer back to the person. The parcels on which there is continuing disputes on full compensation are parts of PR13 and V5317. Those on which there is dispute for the return are: V5318, V5319 and V5320.

The argument of the appellants is that compensation has been paid in the sum of SRs1.95m so that the respondent cannot complain.

[8] Appellants argue that once compensation has been paid, the divested owner loses his right to return of the lands. Our examination of the text shows that nothing in Part III of Schedule 7 of the Constitution shows that such an interpretation is permissible. On first blush, that would seem to be an attractive argument.

[9] One needs to be cautious in adopting it, though. We are here not in the realm of the ordinary law of compulsory acquisition of property where the quid pro quo principle applies in that once the compulsory acquisition of property is effected by the state, what ensues is payment and there is no returning back unless challenged in a court of law. We are here in the realm of the application of a special constitutional provision which speaks in so many words of payment of full compensation and the possibility of return. First, compensation should be prompt, adequate and effective. If the compensation falls short of it, the owner has no right to the return of the property acquired under the statutory law but a right to an adjustment of the compensation so that his right to a prompt, adequate and effective compensation is given effect to. But that is under the general law. In the case of the acquisition, we are concerned with, we are dealing with a constitutional provision which overrides any other law. We do not read into the relevant text of the Constitution such a possibility. There must be a very good reason which motivated the draftsmen of this text not to insert such a provision. If they did not insert such a possibility. One reason which immediately occurs to our mind is that, if such a possibility were open, the whole objective of Part III would have been defeated. It would have given the government an escape route to flee from their obligation of return of lands which had been compulsorily acquired for no good cause, as it were. The acid test was development or no development.

[10] Another distinguishing feature in our case is that we are not in a situation where a development has been specifically identified by government following which it proceeds to make an acquisition in public interest. We were dealing with a situation where at one time there was a wholesale acquisition of property at various parts of the island without any concrete government plan yet to develop any, in pursuit of some unidentified obscure policy. Such acquisitions are inherently anti-constitutional and oppressive. And the only mitigation is the return. The

wholesale acquisition is obvious by the extent and the places at which the acquisitions were done:

[11] That today would be regarded as a blot on the democratic image of the country so that the earlier we make it a thing of the past the better it is. In the light of the peculiar history of those acquisitions, one may say that it is by concession to government that the Constitution provided that if the government was genuinely pursuing a development project in the wholesale acquisition, it could continue to do so insofar as the part development was concerned.

[12] It is worthy of note that payment of compensation was not inserted as a bar to the return of lands except where the compensation was full. We may now look at the constitutional provisions which constitute our supreme source of law for their proper purport:

[13] The relevant section of Part III of Schedule 67 of the Constitution reads:

“14.(1).The state undertakes to continue to consider all applications made during the period of twelve months from the date of coming into force of this Constitution by a person whose land was compulsory acquired under the Lands Acquisition Act, 1977 during the period starting June , 1977 and ending on the date of coming into force of this Constitution and to negotiate in good faith with the person with a view to;-

- (a) where on the date of the receipt of the application the land has not been developed or there is no Government plan to develop it, transferring back the land to the person;*
- (b) where there is a Government plan to develop the land and the person from whom the land was acquired satisfies the Government that the person will implement the plan or a similar plan, transferring the land back to the person;*
- (c) where the land cannot be transferred back under sub-sub-paragraphs (a) or sub-sub-paragraph (b);-*
 - (i) as full compensation for the land acquired, transferring to the person another parcel of land of corresponding value to the land acquired;*
 - (ii) paying the person full monetary compensation for the land acquired; or*
 - (iii) as full compensation for the land acquired, devising a scheme of compensation combining items (i) and (ii) up to the value of the land acquired.*

(2) For the purposes of subparagraph (1), the value of land acquired shall be market value of the land at the time of coming into force of this Constitution or such other value as may be agreed to between the Government and the person whose land has been acquired.

(3) No interest on compensation paid under this paragraph shall be due in respect of the land acquired but Government may, in special circumstances, pay such interest as it thinks just in the circumstances.

(4) Where the person eligible to make an application or to receive compensation under this paragraph is dead, the application may be made or the compensation may be paid to the legal representative of that person.

[14] As may be seen, the Constitution deals with only three scenarios: where there has not been any development; where there is no Government plan to develop it; and where there is government plan to development but the development may be undertaken by the divested landowner.

[15] Nowhere do we see a provision that states that where compensation has been paid, the divested landowner has no right to make a claim for return. It is eloquent that the appellants do not state that full compensation has been paid; they themselves aver that “some compensation” has been paid in the total sum of SCR1.95 million. The above-cited constitutional provisions make no mention of the fact that no transfer back is possible where there has been compensation paid, all the more when it is just “some”. All that they state about compensation is that, on certain events occurring, compensation remains the only option. These are: where there has been development on the land and where there is government plan to develop same which development, on having been offered to the land owner, he declines to carry out. In such a case, government may take upon itself to develop it and to pay full compensation.

[16] We hold, therefore, that payment of compensation, where the quantum is disputed, is not a bar to a demand for the return of the land under the relevant constitutional provisions. Inherent in the constitutional provision is the concept of full compensation. If government is not prepared to pay full compensation for any plot of land subject to the section 14 applications, it cannot argue that the applicant cannot ask for the return of the lands. In this case, the respondent has always disputed the quantum of compensation it has received. Accordingly, he is entitled to be considered for the return if the conditions for return are satisfied. And the conditions are those which have been specified in section 14(1) (a) and (b): namely, the land has not been developed or there is no Government plan to develop it; however, where there is a government plan to develop it, an option should be given to the owner to develop it.

[17] This leads us to the obvious question as to the meaning of development.

MEANING OF DEVELOPMENT

[18] A lot lies on the crucial question of the meaning of development. The learned Chief Justice, with whom Burhan J, agreed, commented that use was not development. Dodin J. gave

a meaning to a term so crucial but which the Constitution left undefined. To Dodin J., “the nature of development always involves a certain goal or several goals that must have been met for the benefit of the community or the targeted group.” Holding on to property without doing anything extra to improve or change it would not amount to development. We endorse that view to the extent that it comes as near the true meaning of development in the law of compulsory acquisition of property demands.

[19] The meaning is inherent in section 14(1)(a) and (b): a development which only the government can undertake in public interest for public purposes and one which any private developer would not wish to undertake for its lack of business viability.

[20] Development should be understood in that sense. Land is a national asset. In a competitive world assets cannot be left to lie fallow so to speak. They should be developed. The question is who should develop what in public interest for public purposes and who should develop what in the national interest for world competitiveness. Where the development may best be done by the private owners, the private owners should be left to do it and government concerned with running government and not running business. There are developments which the private owners will not be able to undertake such as the construction of airports, roads and infrastructure, in the context of small islands. These mega projects should be left to the government to do. But it is not only mega projects which become the concern of government. Even small projects are their concern: construction of drains, enlargement of roads, provision for a pitch for football, a market place etc. The private sector will be little interested in engaging in such developments as they do not give business returns. Businesses are interested in mega projects like luxury hotels or the luxury flats. The key question is what is in public interest which can only be undertaken by government and not the private sector. That is the concept in the Constitution. That is also what underlies the provision of section 14 when it provides that where there is a plan for development the option should be given to the owner. It is not the business of government to engage in business. It is the business of government to create an enabling environment for business and development and to facilitate it. If land is scarce, it is in the interest of government not to hold on to land and thereby inhibit development. It is in its interest to return it and encourage its exploitation.

[21] That is the reason for which we endorse the departure of the learned Chief Justice from the decision of **Lise du Boil v Government of Seychelles and Others, Constitutional Case**

No. 5 of 1996. That 1996 decision should be put to rest. If **Lise du Boil** were allowed to stand in our case-law it would mean that the Government would have a right to enter into any successful or unsuccessful private business or development, take it over and run it with the only attached responsibility of paying compensation with all the risk and peril to which government run businesses become vulnerable. That is not what the Constitution envisaged. By the use of the expression “has not been developed” it does mean that Government should show that on acquiring a property, it has a serious project to develop it for a public purpose in public interest, a development which the private sector would not be interested in.

[22] In this sense, as rightly remarked by the Constitutional Court, there was a duty on Government to put the option to the respondent to present its plan of development and give him the option to develop the property, and if he agreed to allow him to do so; or if he declined, to give him full compensation for same. In this regard, the decision of the Judicial Committee of the Privy Council in the case of **Harel Frères v Ministry of Housing, Lands and Town and Country Planning 1986 PRV 58** becomes very persuasive for our purposes. The government of Mauritius proceeded to acquire property of H on the ground that government needed the property for the purposes of boosting its economy in the tourism sector. The project it envisaged was that of the construction of a hotel. The Law Lords underscored the principle that compulsory acquisition of property is not meant for such types of development which can best be done by the private sector. When government comes up with such a plan, government should - “

“lead evidence indicating with all necessary particularity the nature and extent of the proposed hotel development, showing how, when and by whom it is proposed to be carried out and why it is necessary or expedient that it be achieved through the medium of public ownership of the land. The appellant will in its turn have the opportunity to controvert the Minister's case by demonstrating, if it can, its own willingness and ability, which it has asserted, to secure that the appropriate development is carried out so as to achieve the social and economic benefits of tourism envisaged by the Government without the need for public acquisition of the land.”

[23] Any acquisition of property has to be in public interest. At this juncture it is worth stating that the previous law used the word acquisition in the national interest which was undefined and left to the imagination of the policy maker as to what was in national interest. One could even argue under such a law to confiscate a property of someone stinking rich and keeping it away from him was in the national interest. The new law avoids importing that term the time-honoured concept of “in the public interest.” The term “acquire in the public interest,” in relation to land, is

defined as the acquisition or taking possession of land for its development or utilization to promote the public welfare or benefit or for public defence, safety, order, morality or health or for town and country planning.” It takes care also to define it so that whatever is done by government may be properly tested by the letter and the spirit of the law in keeping with the laws of the market economy and the laws of a liberal democracy.

[24] With the above, we now come to the application of the meaning of development to the facts of the case. The Constitutional Court proceeded on the premises that the factual aspects of the case were not in dispute. That is true for the most part. But because the facts were inadequate for our own consideration, we invited the parties to the case to file an affidavit as to what is the present state of the properties. The content of the affidavits confirm the findings of the learned Judges on the state of the play with regard to V5318. V5318 is in the same state as it was when the government acquired it. At the time, it was a block of flats. It has remained a property with the same block of flats. As regards V5319, the property given to Seychelles Industrial Development Corporation in 1989 has been returned to government in 2008. There is the construction of a high rise which has been stopped by an order for injunction applied for by the Respondent.

[25] As for V5320, the facts before the Constitutional Court were that there were no developments except use a small one serving the community with sports facilities. An impression was given to us that we had only tarmac laid. When the photographs were produced annexed to the affidavits, we found that that development is a modern infrastructure for leisure in public interest. It cannot be returned and full compensation should be paid under section 14(1)(c).

[26] We have stated above that, in case the land cannot be returned, government should pay compensation. Compensation shall be for the market value of the land at the time of coming into force of the Constitution or such other value as may be agreed between the Government and the divested owner.

[27] However, it should be noted that the date of entry into the Constitution was set down as the cut-off date because it was thought that all claims would be settled within a reasonable time. 30 years have elapsed since. It follows that the idea of market value should not be defeated by an interpretation which smacks of bad faith in causing a delay. Government should not be seen

to be benefitting from the circumventing the clear provision of the Constitution by causing a delay in compensation which is clearly inordinate. It is a fundamental principle that all compensations arising out of compulsory acquisitions of land should be prompt, effective and adequate.

[28] We consider that the proper way for the government to deal with its undertaking it has assumed some 14 years ago is to set up a statutory or an Administrative Tribunal through decision of Cabinet presided over by some competent persons knowledgeable in the history of this law so that all the applications received could be dealt with along the line suggested above. While we concede that these matters could not have been determined overnight, the fact remains that delay beyond a certain point amounts to denial. The delay has in this case had ended up in denials of constitution justice.

[29] If two to three years delay may be granted to the government to have disposed of the applications, any delay beyond has become denial of constitutional justice for which constitutional redress should be granted unless government comes up with an acceptable recital of facts in this regard. The matter should have been better dealt with through the setting up of a proper system. We are unaware whether there was or there was not one.

[30] In sum, the principles which should guide the determination of pending cases should be:

1. The overriding criterion of whether there has been development or not is the concept of public interest. If the development was one that the owner could himself do such as development of a restaurant, a hotel, a block of flats for expatriates etc, public interest dictates that the owner should be given the option to decide whether it will develop the property on that plan or agree to be compensated instead.
2. If public interest lies in undertaking a development such as building a public road, a bridge, a motorway or an airport, then there is a development in the constitutional sense. That may be said for acquisition of a small plot for the construction of a drainage system which may serve the community. Sometimes, just a small plot is needed to adjust an uninterrupted flow of water in which the private developer will not be interested.
3. A distinction should be made between a development that a private owner may do and another which a private owner may not be interested in doing. Where the

development is one that the previous owner may undertake, the property should be returned and the owner given the incentive to develop same.

[31] In the light of the above, we allow the appeal with regard to parcel V5320. It is a multipurpose sports complex already in place which obviously serves the community. It cannot be returned without denying the community a benefit to which they have been enjoying. There is no evidence that alternative facilities are available to the community should the parcel be returned. We confirm the decision of the Constitutional Court for parts of V5317 and the whole of V5318. With regard to parcel V5319, we note from the pictures and photographs submitted that government has seriously started developing same. There is no evidence of what is the type of development involved. The respondent caused an injunction to be issued against the continuing construction of the building. There is no evidence that the respondent was given the option to exercise his 14(1)(b) option. That option should be given to him. We so order. Should he decide not to exercise it, then full compensation should be paid to him.

THE CROSS APPEAL

[32] The cross appeal questions the decision of the Constitutional Court on the quantum of the compensation. It should be straightway stated that the issue of compensation in land acquisition matters is not treated the same way as a claim in damages. As the Judicial Committee of the Privy Council stated in the case of **Harel Frères v Ministry of Housing, Lands and Town and Country Planning [supra] 1986 PRV 58**, hardship is inherent in a case of compulsory acquisition.

“Every compulsory expropriation of an unwilling landowner is prima facie a hardship and the question whether there is reasonable justification for imposing such a hardship ... is intimately bound up with the question whether it is necessary or expedient that the land should be taken into public ownership in order to achieve one of the public purposes.”

[33] It is for the government to come up to show that the compensation it has given is full in the sense that it is adequate, prompt and effective to alleviate the hardship imposed on the citizen whose property has been taken away from him to be dedicated for public purposes.

[34] One uses the comparative method to determine the market value of the property *in lite*. The Court, in awarding compensation in the case of the Respondent took the view that there

was insufficient evidence in that regard. The Respondent had filed a document from a Quantity Surveyor which among other things purport to give the value of the properties in question. The claim has been for SRS9.6 million. The Court decided that it was largely unsupported by admissible evidence. The respondent had claimed loss of rent in Victoria for parcel 5319 for 15 years from 1995 to 2009 at the rate of SR15,000 per month which made a total of SR2,700,000. He also claimed rent for the 6 blocks of flats for 15 years for a total amount of SR3,780,000. With inflation taken into account, the figure has reached R12,960,000.

[35] The Court found difficulty in accepting the figures on the ground that they had been merely dropped from midair, as it were. It also stated that interest could only be claimed in special circumstances as per section 14(3) of Schedule 7 of the Constitution. It, therefore, ordered that monetary compensation be paid : (a) for the portions of PR13 which had been transferred to third parties; (b) for parcel V5317 to be agreed between the parties, and, in case it is not, with the assistance of respective valuers or a team of 3 valuers on a majority decision basis; (c) at the market rate as at the time of the coming into force of the Constitution. It dismissed the claim for interest and for loss and damages claimed.

[36] It is the contention of the respondent in this case that the figures were admitted by the appellants in the pleadings. We would agree with the decision of the court that any claim for compensation which relies on the market value of the acquired properties were best resolved with the assistance of experts in the field and reliable comparables. In this case, there was no such evidence brought by either party. It is easy to be easy with other people's money.

OUR DECISION

[37] For the reasons above, we decide as follows:

On the appeal by the Government and the Attorney General:

- (a) we order the return of plots such parts of PR13 as have been agreed, with the payment of full compensation for such parts as shall not be returned;
- (b) we order full compensation of property V5317 which cannot be returned for having in the hands of third parties today;
- (c) we order the return of parcel V5318;

- (d) for plot V5319, we order that the option be given to the respondent as to whether it will undertake the development or take compensation for same;
- (e) for V5320, we take the view that it is a small development but beneficial to the community with a small but useful multipurpose sports complex as the photographs show. Since it is completed, full compensation should be paid for same. We so order.

[38] On the cross appeal by the respondent as regards the amount of compensation to be paid, we order that since the sums which are involved are not negligible and is to be borne by the tax payer, there should be due expertise and a professional approach in their assessment and award.

IMPLEMENTATION OF OUR ORDERS

[39] We have been seriously concerned with the delay which has occurred in giving effect to the rights of the divested owner. The compensation should have been paid as early as reasonably possible, as rightly submitted by Mr Boullé who invoked Schedule 2 of the Constitution which requires that where no time is prescribed or allowed within which an act shall or may be done, as the case may be, it shall be done with all the convenient speed and as often as the occasion requires. As long as 19½ years have elapsed since Government undertook constitutionally to address the issues of past injustices.

[40] We invite the Executive to set up an Administrative Tribunal or Board comprising members knowledgeable in the field of law and evaluations for the purposes of resolving all unfinished business with regards to Part III of Schedule 7 of the Constitution.

[41] Because of the fact that the alarm bell has been ringing for a while now, we are adopting a constitutional solution to a constitutional issue. We shall call this case at the next sitting to ascertain what progress has been achieved in the disposal of cases under Part III of Schedule 7 of the Constitution.

[42] We remit the case back to the Constitutional Court for the determination of the quantum of compensation. That should not prevent parties to negotiate in good faith for a settlement of outstanding issues on quantum on an exchange of documents from the relevant experts or through mediation.

We make no order as to costs.

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S. B. DOMAH
JUSTICE OF APPEAL

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M. TWOMEY
JUSTICE OF APPEAL

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J. MSOFFE
JUSTICE OF APPEAL

Dated this 7th December 2011, Victoria, Seychelles.