



**IN THE SUPREME COURT
TURKS AND CAICOS ISLANDS**

ACTION NO. CL 103/22

BETWEEN:

99 SAPODILLA LTD

APPLICANT/APPELLANT

-and-

**THE GOVERNOR OF
THE TURKS AND CAICOS ISLANDS**

RESPONDENT

Before: The Hon. Mr Justice Anthony S. Gruchot

**Appearances: Mr Tim Prudhoe and with him Ms Nadia Chiesa of Stanbrook
Prudhoe for the Applicant/Appellant**

Ms Motheba Linton, Senior Crown Counsel for the Respondent

Hearing Date: 14th May 2024

Venue: Court 5, Graceway Plaza, Providenciales.



JUDGMENT

1. At the invitation of Mr Prudhoe, I gave an *ex tempore* judgment in this matter on 16th May 2024 allowing the appeal on the Land Acquisition Ordinance (Cap. 9.07) ('the Ordinance') section 17(1)(b) ground that "[T]he acquisition of the particular land is not necessary for the purpose intended."
2. I indicated that a full written judgment would follow. This is that Judgment.

Background

3. Following a decision made in Cabinet on 9th December 2021, the then Governor of the

Turks and Caicos Islands ('TCI') on 23rd August 2022 and pursuant to section 5 of the Ordinance, issued a Declaration of Intended Acquisition for public purposes¹, of parcel 60602/99, Norway and Five Cays, Providenciales, Turks and Caicos Islands ('the Declaration'). It is unclear what led to the decision.

4. Ms Linton refers me to the affidavit of Cheryl-Ann Jones, sworn on 15th March 2023, who was leading up to and at the time the Declaration was published, the Permanent Secretary with *inter alia* administrative responsibility for land acquisition, in which she refers to a 'Confidential Cabinet Paper' she prepared and upon which it is submitted the Cabinet/Governor relied in making the decision.
5. Parcel 60612/99 Norway and Five Cays, Providenciales, Turks and Caicos Islands ('the Target Land') is situated immediately adjacent to the Sapodilla Bay beach and immediately south of the public beach access and comprises approximately 0.52 acres of undeveloped land with approximately 115 feet of sandy beach front. The Target Land is zoned for low-density residential development.
6. I was provided with an affidavit sworn on 16th September 2023 from Mr Colin Cottage who describes himself as a MRICS Registered Valuer, managing director of compensation at Ardent Management Limited, an independent firm of property consultants specialising in compulsory purchase and compensation. He was put forward and accepted as an expert in compulsory purchase and property matters. Ms Linton waived her right of cross-examination and as such, save for the discussion regarding an affidavit filed by Mr Clerveaux below², his evidence is unchallenged.
7. Mr Cottage states that he was instructed by counsel for the Applicant/Appellant to provide advice in respect of the intended compulsory acquisition of parcel 60612/99 and to identify available alternative sites which would meet the requirements of the purposes intended by TCIG without the necessity for compulsory acquisition. Exhibited to his affidavit is a report in which he details that he has experience with compulsory purchase and in the assessment of compensation in the TCI, having advised land owners in

¹ Known in England and Wales as a 'compulsory purchase order' ('CPO'). This term is referred to in the authorities cited herein.

² At paras. 41 to 46.

connection with land acquired for the redevelopment of the Providenciales airport. He states that he has been assisted in the preparation of his report by Mr. Steven Kendrew, senior valuer with BCQS International, which operates in the Turks and Caicos Islands. He states that Mr Kendrew relocated to the Caribbean over 10 years ago and is currently based in the TCI and has local knowledge of property matters. Being such a small jurisdiction Mr Kendrew is known to the Court for his property expertise.

Reasons for the Acquisition of Parcel 60612/99

8. Since 2017, activities at the beach have been subject to numerous complaints of illegal beach vending and associated issues.
9. Ms Jones states:

“In my capacity as Permanent Secretary³, I was involved in the Government’s efforts at alleviating the problem of increased illegal beach vending activities in the Turks and Caicos Islands. This increase had resulted in tensions between beachfront proprietors, tourists and beach vendors. The Ministry of Tourism and the DECR⁴ had consistently been receiving complaints about the aggressive behavior (sic) of vendors and conflicts between vendors and beachfront proprietors.

One of the actions that I took was [the] preparation of a Confidential Cabinet Paper which highlighted the following problems at Sapodilla Bay Beach which are reproduced verbatim as they appeared in the Cabinet Paper:

*(i) **Vendors encroaching on private property**- The vendors at Sapodilla Bay Beach have built structures within the boundaries of the landowners and are storing their equipment on the site. The littoral rights of the property owners on the Sapodilla Bay Beach is (sic) possibly being infringed on. Therefore, this leaves the Turks and Caicos Islands Government open to litigation.*

*(ii) **Disturbance of the peace**- in the past year the number of reports from*

³ At the relevant time, in the Ministry of Tourism, Environment, Fisheries and Marine Affairs, Culture and Heritage, Agriculture, Religious Affairs and Gaming (Ministry of Tourism).

⁴ The Department of the Environment and Coastal Resources.

residents complaining of the loud noise and music on the beach at all hours has significantly increased. The location has been the site of a number of beach parties and events⁵ that have been reported to the DECR and RTCIPF⁶.

*(iii) **Number of vendors on the beach exceeds carrying capacity**- There are currently 7 vendors operating from (sic) from this location. The businesses include water sports rentals, rental beach equipment, sale of food and drinks and souvenirs. The width and length of the beach is not sufficient for the vending activities and regular beach use. This limitation in space has led to a number of altercations between vendors and beach users.*

*(iv) **Marine safety**- there has (sic) been numerous complaints from beachgoers at Sapodilla beach on the Jet (sic) ski operators coming in too close to the shore and endangering swimmers.*

***Poor (sic) waste management**- with the increase in activity at the Sapodilla Bay beaches (sic) there has been a significant increase in the waste produced at the site. The waste receptacles at the location are not sufficient for the activity occurring.”*

10. Ms Jones went on to describe the options considered by the Ministry of Tourism and DECR which she says were presented to the Cabinet⁷. These were:

“Option 1 (see Appendix I for concept design)

(i) Infilling of parcel 60612/13 and preparing the lot for the vendors from the Sapodilla Bay Beach. It is proposed that the vendors will move their physical enterprise to this lot and will be able to launch their water sports activities from the beach access.

(ii) Place portable restroom facilities at the site for vendor and visitor usage.

⁵ It is presumed that these parties and events have not been authorised by way of a permit issued by the director of DECR as required by sections 16, 19 and 22 of the Beach and Coastal Vending Ordinance and Regulation 3 of the Beach and Coastal Vending Regulations 2021 otherwise a) Ms Jones would have said so, and b) the problem could be resolved by not issuing any more permits or imposing certain conditions on the grant of a permit under the provisions of section 22(3) of that ordinance and under Regulation 7(e).

⁶ The Royal Turks and Caicos Islands Police Force.

⁷ It is accepted that Ms Jones was not at the Cabinet meeting when these options were presented. It is unclear who made the presentation.

*This will address the issue of sanitation until **the permanent solution is determined.***

(iii) The clearing and preparation of the lot 60612/172 for parking allocation for visitors to the Sapodilla Bay Beach. This will alleviate the issue of parking on the side of the streets. (This will also, open an entrepreneurial opportunity for the transport of persons to the beach access). (Emphasis added)

Option 2

(i) Convert parcel 60612/13 into a parking lot to alleviate the congestion and roadside parking. This provides a solution for the parking issue but does not address the vending, environmental and overcrowding issues of the beach.

(ii) Continue with police and DECR presence at the beach to facilitate crowd control, licence compliance⁸ etc.

Long Term (see Appendix II for concept design)

(i) The purchasing of lot 60612/99 that would allow for the development of a vendor market to permanently accommodate the vendors and tourism activities.

(ii) Finalisation and passage of the Turks and Caicos Islands National Beach Vending, Coastal and Marine Commercial Activity Policy.”

11. The first two options presented by Ms Jones refer to a parking issue. This is not an issue she identifies as a problem associated with the illegal beach vending activities.
12. The Declaration followed brief and unsuccessful negotiations for the Turks and Caicos Islands Government (‘TCIG’) to purchase the Target Land by private treaty. Parcel 60612/99 is undeveloped land however; the Applicant/Appellant also owns the adjacent southerly parcel 60612/100 upon which is built a luxury villa which the Applicant/Appellant rents as tourist accommodation. The Applicant/Appellant acquired the parcels in or about March 2013. The Applicant/Appellant did put forward an offer for TCIG to acquire both parcels but that was not acceptable, TCIG having no interest in

⁸ As detailed below, none of the vendors can be licenced to carry on vending activities on Sapodilla Bay beach. See paras. 34 to 36 below. As such, the inference is that licence compliance is either ineffective or not being implemented.

acquiring a villa property.

13. The Declaration appeared as Government Notice 536 in the 26th August 2022 Gazette. The Appellant's undisputed evidence is that it was never notified of the Declaration until it was published in the Gazette.
14. Correspondence ensued between the Appellant's attorneys and the Attorney General's Chambers and on 4th October 2022 the Appellant filed an originating motion pursuant to Ord.55 r.5, bringing this appeal.

The Appeal

15. It appears that this is the first appeal of its kind, Mr Prudhoe submitting that there is no local jurisprudence.

16. Section 5(1) of the Ordinance provides:

“Whenever it appears to the Governor that any particular land is needed for a public purpose a declaration shall be made to that effect under the signature of the Cabinet Secretary⁹.”

17. Section 5(3) provides:

*“Every declaration shall be published in the Gazette and shall state—
... (b) the particular purpose for which it is needed; ...”*

18. The Declaration stated that:

“The particulars required by Section 5(3) of the Land Acquisition Ordinance are as follows:

...

(b) The particular purpose for which it is needed: The development of a vendors market to accommodate vendors and tourism activities.”

19. Section 17(1) of the Ordinance provides:

“Any person, who claims to be or claims that, if the proceedings for the acquisition of any particular land are continued, he will be an interested person, may appeal to the Court against the decision to acquire that particular land. Such appeal may be made on either or both of the following grounds—

⁹ The Declaration was not signed by the Cabinet Secretary but nothing turns on that.

(a) there is an alternative site available which would apparently meet the requirements of the purpose intended without the necessity for compulsory acquisition;

(b) the acquisition of the particular land is not necessary for the purpose intended.

20. By way of email dated 30th November 2022, Ms Linton wrote to Mr Prudhoe in response to his request for information and copy documents clearly aimed at setting up an appeal, stating:

*“We believe that the Privy Council ruled in Wijeyesekera -v- Festing [1997] (sic) a directive from the Governor of Ceylon directing a Government Agent to compulsorily acquire land was not open to challenge by the landowners. **That is our position.**”* (Emphasis added)

21. **Wijeyesekera -v- Festing**¹⁰ was an appeal to the Privy Council from a judgment of the Supreme Court of Ceylon (September 4, 1917). Lord Finlay giving the judgment of the Board stated:

“The whole point in the case is whether the decision of the Governor in Council is conclusive on the point that the land is wanted for a public purpose. It is now contended that it is open to the person whose land is affected to challenge the decision of the Governor in Council upon this point, as embodied in the order directing the Government Agent to take order for the acquisition of the land.

This question has already been raised in the Courts of Ceylon. In the case of the Government Agent v. Perera (1) the very point now under consideration was raised and decided in the Supreme Court of Ceylon. It is enough to read the first two paragraphs of the head-note: "In the acquisition of a private land for a public purpose, the Governor is not bound to take the report of the Surveyor-General as to its fitness for such a purpose. His decision on the question whether a land is needed or not for a public purpose is final, and the

¹⁰ [1919] AC 646.

District Court has no power to entertain objections to His Excellency's decisions."

It appears to their Lordships that that decision was manifestly right. The whole frame of the Ordinance shows that what the District Court is concerned with is the assessment of compensation, but their Lordships do not desire to rest their opinion that the decision of the Governor is final merely upon the question of the Court before which the question is raised. It appears to their Lordships that the decision of the Governor that the land is wanted for public purposes is final, and was intended to be final, and could not be questioned in any Court. The nature of the objection is such that it would be obviously unsuitable for the District Court, which is concerned with questions of compensation which would arise if the land is to be taken.

But the question might also be raised in a preliminary way, as was suggested by Lord Wrenbury in the course of the argument. It might be raised by an application to the Court to stay the further proceedings on the ground that, although the Governor in Executive Council had made the order, it was not a case where the condition precedent of the Ordinance was really fulfilled namely, that the land was wanted for a public purpose.

In their Lordships' opinion no such proceeding would be competent in such a case, and the decision of the Governor in Council, making an order under the latter part of s. 6 of the Ordinance, is final and conclusive."

22. The above position was maintained by Ms Linton in her oral submissions, notwithstanding her comprehensive submissions as to why the appeal should be dismissed on other grounds. The argument cannot be sustained. **Wijevesekera** was decided with respect to sections 4 & 6 of the Acquisition of Land Ordinance 1876¹¹. Section 4 provides:

"Whenever it shall appear to the Governor that land in any locality is likely to be needed for any public purpose, it shall be lawful for the Governor to direct

¹¹ Ceylon Ordinance No. 3 of 1876

the Surveyor-General or other officer generally or specially authorised by the Governor in this behalf, to examine such land and report whether the same is fitted for such purpose.”

And section 6 provides:

The Surveyor-General, or other officer so authorised as aforesaid, shall then make his report to the Governor, whether the possession of the land is needed for the purposes for which it appeared likely to be needed as aforesaid. And upon the receipt of such report it shall be lawful for the Governor, with the advice of the Executive Council, to direct the Government Agent to take order for the acquisition of the land.”

23. Section 17 of the Ordinance is titled ‘Appeals against declaration of intended acquisition’.

It is beyond peradventure and, in so far as I have to, I so find that section 17 allows for an appeal or a challenge to a Declaration made by the Governor under section 5.

24. The appeal is brought on 2 grounds:

- a. The acquisition of the Target Land is not necessary for the purpose intended, that being stated at (b) of the Notice of Intended Acquisition as being the development of a vendors’ market to accommodate vendors and tourism activities;

And further or alternatively:

- b. There are one or more alternative sites available which would meet the requirements for the purpose intended without the necessity for compulsory purchase.

25. Ms Jones concludes her affidavit by saying:

*“I know that the Government took all reasonable steps to identify alternative solutions to using parcel 60612/99 and the latter was determined to be the best solution to the **Government’s plans**. It was also the only parcel that was deemed suitable for permanent solution to the problems identified with beach vending on Sapodilla Bay.”* (Emphasis added)

26. I was not provided with any information as to what the ‘Government’s plans’ were. Ms Linton confirmed that all the options that were considered by Cabinet were those listed in

Ms Jones's Affidavit i.e. only those listed in paragraph 10 above. Mr Prudhoe submits that:

“The Respondent has put forward no evidence that (i) it considered alternative sites that may be suitable for the intended purpose of the vendors market prior to issuing the notice of intended acquisition or (ii) the intended acquisition is necessary.”

Beach Vending

27. It is useful to give an overview of the legislation related to beach vending. The Beach and Coastal Vending Ordinance 2021 (‘the BCVO’) and the Beach and Coastal Vending Regulations 2021 (‘the Regulations’) came into force on 13th December 2021. The BCVO is described as:

“An Ordinance to provide for the regulation of beach and coastal areas, for vending activities within those areas, and for connected purposes.”

28. Section 13 of the BCVO prohibits any vending activity on any beach or coastal area without a licence. It is not disputed that the vending activity taking place at Sapodilla Bay Beach falls within the provisions of the BCVO.

29. Section 51 of the BCVO provides that a permitted vending activity shall take place only in a zone established by the Regulations. It also provides that any licence issued under the BCVO must state the zone and the permitted vending for that zone.

30. Section 44 provides for various offences relating to licences issued under the BCVO including *inter alia*:

- a. Operating a vending activity contrary to the conditions of a licence; and
- b. Operating a vending activity outside the permitted zone.

31. Section 45 provides for various offences relating to conduct including *inter alia*:

- a. Using threatening, abusive or indecent language on a beach or coastal area;
- b. Disturbing the peace by playing loud music or making noise to the annoyance of persons residing or being in the neighbourhood;
- c. Operating a vessel in a reckless manner as to pose a threat to the public, including

operating a vessel within 300 feet of a beach or coastal area; and

d. Littering on any beach or coastal area.

32. Regulation 5 provides that the issue of a licence shall be subject to specific conditions including that all vending equipment is removed at the end of business hours. Business hours are not defined in either the BCVO or the Regulations.
33. Regulation 11 provides that there are vending zones established throughout the Islands for specified vending activities within each zone. These are set out in Schedule 3 of the Regulations.
34. No vending zone is established on the beach in Sapodilla Bay. From the above, it is apparent the activities on Sapodilla Bay Beach, including the matters identified in paragraph 9 above are in breach of both the BCVO and the Regulations and a separate action has been brought to compel enforcement.
35. Schedule 3, Part II (15) of the Regulations describes the vending zone established for Sapodilla Bay ('the Sapodilla Bay Zone'). The description is:

"Sapodilla Bay Vending site has four (4) vending plots. Each plot is 10 by 20 feet. Vending that can occur on this site include:

Beach Activity

Renting and selling of beach equipment and souvenirs e.g. chairs, umbrellas mats, floats, snorkels etc.

Sale of beverages or food.

Renting of motorized (sic) vehicles and vessels e.g. jet skis, jet boats, water skiing, tubes or banana boats, parasailing, jet propulsion shoes.

Renting of non-motorized (sic) vehicles e.g. water cycles, sail boats, canoes, kayaks, trampolines."

36. The Sapodilla Bay Zone is established on Crown land on the northern side of the road opposite the public beach access noted in paragraph 5 above. It is common ground that this zone is presently unused.
37. Mr Prudhoe points out that the BCVO and the Regulations came into force 4 days after Cabinet decided to acquire the Target Land, the Notice of Commencement having been

made just one day after the decision, and submits that both the BCVO and the Regulations must have been passed by the House of Assembly before the decision. The inference he suggests is that the former Governor must have been aware of the Sapodilla Bay Zone when considering the acquisition of the Target Land but seemingly gave it no consideration.

Grounds of Appeal

38. The appeal is advanced on both grounds provided in the Ordinance¹², that is:

- (a) there is an alternative site available which would apparently meet the requirements of the purpose intended without the necessity for compulsory acquisition;
- (b) the acquisition of the particular land is not necessary for the purpose intended.

39. Section 17(4) of the Ordinance provides:

“If the appeal is allowed the Court shall make a declaration to that effect setting out the grounds for the decision. If the appeal is allowed upon grounds referred to in paragraph (a) of subsection (1) of this section, the Governor shall cause the proposal for the acquisition of the particular land to be reconsidered in the light of the evidence before and the finding of the Court, but shall not be bound to discontinue the proceedings for the acquisition of the land concerned if he is satisfied that in the public interest the acquisition of the particular land is preferable to the alternative site proposed by the appellant. If the Court allows the appeal upon the grounds referred to in paragraph (b) of subsection (1) of this section, the Governor shall give directions for the proceedings for the compulsory acquisition of the particular land to be discontinued.”

40. For obvious reasons Mr Prudhoe urges the Court to allow the appeal pursuant to section 17(1)(b) as the result would be that the acquisition process would be discontinued. Notwithstanding, Mr Cottage, in his report, identifies several alternative sites he suggests that may be suitable for a vendor’s market without the need for the acquisition of parcel

¹² See para. 19 above.

Suitable Alternative Sites

41. Before the filing of Mr Cottage's affidavit, the Applicant/Appellant applied pursuant to O. 38 r.36(1) for leave to adduce expert evidence. The application was opposed¹³ but I granted leave. On 11th April 2024, the Respondent filed an affidavit of Mr Wesley Clerveaux¹⁴, who by that time had replaced Ms Jones as Permanent Secretary. In that affidavit, Mr Clerveaux says:

"In my capacity as the Permanent Secretary, one of my duties is to advance the Government's endeavours to alleviate the problem of increased illegal beach vending activities in the Turks and Caicos Islands."

42. Mr Clerveaux then states that the purpose of his affidavit is to say why none of the proposed alternative sites would be suitable for the development of a beach vending market.

43. Mr Prudhoe takes issue with the admission of that affidavit on the following grounds:

- a. When the Applicant/Appellant sought leave to adduce the expert evidence of Mr Cottage, the Respondent did not seek leave to file evidence in response.
- b. The Applicant/Appellant's attorneys had sought to agree a timetable with respect to the outstanding steps required to be completed to bring the matter to trial. Ms Linton responded to the proposed trial bundle index stating that she wished to have the affidavit (filed that day) included and acknowledged that an application for leave would be required. No application was made.

44. Mr Prudhoe also questions whether Mr Clerveaux is an expert.

45. Ms Linton in her skeleton argument submits:

"The Respondent filed an affidavit of Wesley Clerveaux in direct response to the affidavit of Mr. Cottage. We humbly ask the court to accept the responses given to each alternative site are adequate for purposes of these proceedings."

¹³ The opposition to Mr Cottage's affidavit goes against the Respondent's argument that it is for the Applicant/Appellant to put forward suitable alternative sites – see paras. 68 to 71 below.

¹⁴ Mr Clerveaux's affidavit refers to an exhibit which was not filed.

46. In the event, Mr Clerveaux’s affidavit does not assist me for the reasons that follow.

47. I make one observation. Mr Clerveaux states:

“Sites listed in the Turks and Caicos Beach and Coastal Vending Regulations 2021

The majority of the vending sites listed for Providenciales in the beach and coastal vending regulations have already been assigned to vendors for their vending operations.”

48. The above statement overlooks that the Sapodilla Bay Zone, which presumably has already been considered to be a suitable site, hence its inclusion in the Regulations, and in immediate proximity to parcel 60612/99, is not being utilised at all.

49. I refer to Ms Jones’s evidence set in paragraph 10 above where she refers to the proposal for the clearing and preparation of lot 60612/172 for parking allocation for visitors to the Sapodilla Bay Beach¹⁵. Mr Prudhoe wrote to Ms Linton on 7th November 2022 drawing to her attention that parcel 60612/172 does not appear to exist. That issue remains unresolved, Mr Prudhoe’s letter in that respect having gone unanswered, and there being no compliance with the order of 22nd February 2023 in which I ordered *inter alia*:

“The Respondent shall within 14 days provide by way of affidavit confirming the following:

...

iv. All information used for the cabinet paper and the relevant meetings of Cabinet in respect of Cabinet’s consideration of parcel 60612/172 and 60612/13 for acquisition; and

v. the plan showing the location of parcel 60612/172.”

50. It remains unclear which parcel was being referred to/considered.

51. Mr Prudhoe refers me to **Brown -v- Secretary of State for the Environment**¹⁶ in which an order for compulsory purchase was quashed for the failure to consider the suitability

¹⁵ This information was first provided in an email from Ms Linton to Mr Prudhoe on 31 October 2022.

¹⁶ (1980) 40 P. & C.R. 285 (1978) at 291.

of other sites¹⁷ in which Forbes J held:

“It must also, it seems to me, be a matter of supreme importance, in considering whether or not to confirm a compulsory purchase order, that not only is there another suitable site available but that very site happens to be in the ownership of the authority that is seeking to exercise compulsory purchase powers. It seems to me that there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary, in order to exercise the powers for the purposes of the act under which the compulsory purchase order is made, that the acquiring authority should have authorisation to acquire the land in question. If, in fact, the acquiring authority is itself in possession of other suitable land- other land that is wholly suitable for that purpose- then it seems to me that no reasonable Secretary of State faced with that fact could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for the precisely this same purpose.”

52. No explanation has been made as to why the Sapodilla Bay Zone is unsuitable for the required purpose other than the comment of Mr Clerveaux set out in paragraph 47 above which is erroneous insofar as it refers to the Sapodilla Bay Zone.

The Acquisition Is Not Necessary for the Purpose Intended

53. Mr Prudhoe directs me to **Prest -v- SSW**¹⁸ in which the Court of Appeal considered the use of the power to compulsorily acquire property. In considering the balancing of an individual’s interest against that of the public interest, Lord Denning in giving the judgment of the Court said:

“To what extent is the Secretary of State entitled to use compulsory powers to acquire the land of a private individual? It is clear that no minister or public

¹⁷ Mr Prudhoe points out that the procedure in England and Wales has a different statutory basis under the Acquisition of Land Act 1981 which provides for a 2-stage process. Firstly, the making of a compulsory purchase order which is followed by a period for objections to be made by interested parties. The second stage is confirmation of the order. The availability of a suitable alternative site has been held by the Courts to be a relevant consideration when deciding whether to confirm a compulsory purchase order. See ‘The Law of Compulsory Purchase’ Honey KC *et al* 4th ed, Bloomsbury Professional at C1902.

¹⁸ [1982] 266 EG 527.

authority can acquire any land compulsorily except the power to do so be given by Parliament: and Parliament only grants it, or should only grant it, when necessary in the public interest. In any case, therefore, where the scales are evenly balanced - for or against compulsory acquisition - the decision - by whomsoever it is made - should come down against compulsory acquisition. I regard it as the principle of our constitutional law that no citizen is to be deprived of his land by any public authority against his will, unless it is expressly authorised by Parliament and the public interest decisively so demands: and then only on the condition that proper compensation is paid, see Attorney-General v De Keyser's Royal Hotel Ltd. (1920) A.C. 508. If there is any reasonable doubt on the matter, the balance must be resolved in favour of the citizen. This principle was well applied by Forbes J in Brown v Secretary of State for the Environment (1980) 40 P. & C.R. 285 where there were alternative sites available to the local authority, including one owned by them. He said (at p 291):

It seems to me that there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary ... if, in fact, the acquiring authority is itself in possession of other suitable land of the land that is wholly suitable for that purpose - then it seems to me that no reasonable Secretary of State faced with that fact could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for precisely the same purpose.” (Emphasis added)

54. Mr Prudhoe submits:

“It appears, based on the Respondent’s (respectfully, flawed) evidence, that the TCIG did not take into consideration the relevance of the Beach Vending Ordinance and Regulations and in particular the designation of plots at Sapodilla Bay beach for licensed beach vending activities - on the intended acquisition of the Target Land

There is no need to acquire the Target Land when a designated area for beach vendors at Sapodilla Bay beach has been established under the legislation for

the very purpose of controlling the proliferation of beach vending in the area.”

55. In **Margate Town Centre Regeneration Co Ltd v Secretary of State for Communities and Local Government**¹⁹ Elias LJ delivering the judgment of the Court, in summarising the relevant legal principles²⁰ stated:

“A CPO should only be made where there is a compelling case in the public interest. An acquiring authority should be sure that the purposes for which it is making a CPO sufficiently justify interfering with the human rights of those with an interest in the land affected: see para 16 of Circular 06/2004. To similar effect are certain observations of Lord Denning MR in Prest v Secretary of State for Wales [1982] 266 EG 527.”

Discussion

56. It appears to be suggested that the acquisition of the Target Land is intended to be a permanent solution to the issues of illegal beach vending on Sapodilla Bay beach, i.e. move the vendors off the beach and establish them on the Target Land thereby making legal, activities that are presently being carried on illegally. Ms Jones’ statements appear contradictory. At the conclusion of her affidavit, she says:

*“It was also the only possible parcel that was deemed suitable **for a permanent solution** to the problems identified with beach vending at Sapodilla Bay.”* (My emphasis)

57. However, when setting out the options presented to Cabinet, she says that placing portable restrooms will address the issue of sanitation *“until a permanent solution is determined”*. In the circumstances, it cannot be necessarily concluded that the acquisition of parcel 60612/99 is suggested to be a permanent solution to the illegal beach vending or why put forward other options for consideration?
58. Insofar as the acquisition of the Target Land is suggested to be a permanent solution, then such a suggestion would appear to be misconceived given that Ms Jones considers that,

¹⁹ [2013] EWCA Civ 1178.

²⁰ As noted in footnote 17 above, the procedure in England and Wales is somewhat different to the provisions under the Ordinance.

for there to be a permanent solution, this requires the finalisation of a National Beach Vending and Marine Commercial Activity Policy²¹. The question that arises is how did Cabinet/the former Governor arrive at a permanent solution absent the policy? I say that simply as an observation and not as an issue upon which I base my decision.

59. I have given careful consideration as to the mischief that the proposed acquisition is to remedy. The Declaration states that the particular purpose for which the land is needed is:

“The development of a vendors market to accommodate vendors and tourism activities.” (My emphasis)

60. Ms Jones states:

“In its meeting of 9th December 2021, Cabinet”

And then goes on to quote:

“[G]ranted approval for the option of the outright purchase of the property in Sapodilla Bay, Providenciales, parcel 60612/099, for the purposes of being used as a Beach Vending Market.” (My emphasis)

61. She does not give the source of that quotation. No evidence has been put forward to explain why TCIG considers there is a need for a second beach vending market in the area.
62. TCIG has already identified the Sapodilla Bay Zone for the purposes of beach vending. It cannot therefore be said that there is no other site available for the intended purpose of a beach vending market. This leads me to the question, then why does TCIG want this particular parcel? In paragraph 9, I set out the problems identified as resulting from the “increased illegal beach vending activities”. Ms Linton confirmed to the Court that these are the issues or the mischief, for which the acquisition of the Target Land is thought to be the solution. Accordingly, consideration then falls under section 17(1)(b), is the acquisition of the land necessary to remedy those issues?
63. Ms Linton makes no submissions as to the issues identified in Ms Jones’ affidavit nor is it explained how the creation of another beach vendors market in the area will address those issues, rather than as one might think, exacerbate them. I have set out in paragraph

²¹ See para. 10 above.

10 above the wording of the options put to Cabinet as detailed in Ms Jones' affidavit. In respect of the 'Option 1' and 'Long Term' proposals each refer to an 'Appendix' containing a 'concept design'. Those appendices have not been disclosed despite the order of 23rd February 2023.

64. The establishment of a beach vending market on the Target Land and moving the vendors wholly onto it, together with an amendment to the Regulations and a grant of licences to those operating illegally would, of course, be facilitated by the acquisition of the Target Land and would also solve the issue of the trespass on private land, but I find it difficult to comprehend that the legalising of otherwise illegal and unlawful activity by way of the compulsory purchase of land can be considered to be in the public interest, *a fortiori* when legislation has been introduced to prevent illegal beach vending.
65. Further, I do not see and it has not been explained how, the development of a new beach vendors market would:
 - a. Address the tensions between beachfront proprietors, tourists and vendors.
 - b. Curb the aggressive behaviour of the vendors complained of by beachfront proprietors;
 - c. Resolve issues of disturbance of the peace;
 - d. Reduce the carrying capacity on the beach; or
 - e. Stop jet ski operators coming too close to the shore and endangering swimmers.

It appears to me that it will not and I was not addressed as to the cognitive process.

66. There is no suggestion that there is to be any reduction in the number of vendors nor any reduction in the kind of vending that will be undertaken.
67. In my judgment the proposed purpose for which the acquisition of the Target Land is required is to remedy the issues identified by Ms Jones. Absent any evidence as to how the acquisition of the land will address those issues then I cannot conclude that on the balance of probabilities, the acquisition of the Target Land is necessary for the purpose intended and, having regard to the authorities above, I must come down on the side of the citizen and I allow the appeal.

68. In conclusion, I acknowledge Ms Linton's submissions that:

"...[T]he Appellant relies heavily on UK (sic) cases which are analysed and decided primarily on the basis of UK (sic) statutes. The procedures set out in those pieces of legislation are different from those under the land acquisition ordinance."

69. Given that I have cited cases from England and Wales I need to address Ms Linton's concerns. As I have noted, the different procedural provisions in England and Wales are acknowledged and were brought to the attention of the Court by Mr Prudhoe²². Ms Linton continues (in response to the suggestion that the Respondent is under an obligation to seek out suitable alternative sites):

"What the Appellant is asking the court would be akin to a litigant in Jamaica seeking to rely on UK (sic) cases which would fly in the face of the strict provisions of the Jamaican Land Acquisition Act."

70. And after referring to the provisions of the Cayman Islands Land Acquisition Law Ms Linton further submits:

"The Jamaican Act is very similar to the Cayman Islands Law. They are intended to show that in considering appeals under the Turks and Caicos Islands Land Acquisition Act (sic), the Court should to the extent possible look to the provisions of the Ordinance and to not have regard to cases that were decided on the basis of foreign statutes."

71. I am of the view that these submissions, as noted above, are directed to the suggestion that TCIG and/or Cabinet was/is under an obligation to consider suitable alternative sites, a duty Mr Prudhoe submits they did not fulfil. I did not hear extensive arguments on the point as the issue arose in the context of the admissibility of Mr Clerveaux's affidavit. The affidavit was excluded from the agreed trial bundle on the issue that no leave had been obtained to introduce it²³. It was therefore before the Court *de bene esse* and no application was made to have it admitted, save as set out in paragraph 45 above. In the event, I have dealt with the issue of suitable alternative sites by consideration of the Sapodilla Beach

²² See footnotes 17 & 20 above.

²³ See para. 41 to 46 above.

Zone, however, I have found in favour of the Applicant/Appellant on the basis that the acquisition of the land is not necessary for the purposes contented.

72. Whilst statutes from other jurisdictions may impose certain duties or restrictions on the deciding authority, I am not of the view that I cannot have regard to the learned principles set out in the authorities I have cited when applying the provisions of the Ordinance. There is no local jurisprudence and I have not been directed to any statute from any jurisdiction that is worded equivalently or broadly similar to the Ordinance which might provide guidance or persuasive authority and accordingly, it is my view that having regard to the principles set out above is a proper course of action.

Disposition

73. Having held that the appeal is allowed under section 17(1)(b) of the Ordinance for the reasons set out above, section 17(4) comes into operation as set out in paragraph 39 above, requiring the Court to make a declaration to that effect.
74. I will hear counsel as to the wording of the declaration.

22nd August 2024

The Hon. Justice Anthony S. Gruchot
Judge of the Supreme Court

