

**NOT FOR
LOAN**

SUPREME COURT
KINGSTON
JAMAICA

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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA
IN SUITY

Suit No. E200/72

Between L. C. McKenzie Construction Ltd.
Plaintiff

and

The Minister of Housing
a corporation sole established by
The Housing Act - 1968

and

The Commissibner of Lands

For the Plaintiff Co.

Mr. Norman Hill Q.C. instructed by
Mr. Orville Cox

For the Defendants

Hon. Leacroft Robinson, Q.C. Attorney General
with Mr. B.J. Scott, Q.C. Senior Assistant
Attorney General instructed by the Crown
Solicitor

Summons for Interim Injunction

Before the Chief Justice

Judgment

On this summons coming on for hearing before me on the 9th November 1972, I adjourned the same for hearing in open court, at the request of the Attorney General and the hearing has since taken place in open court.

The L. C. McKenzie Construction Company seeks the grant of an interim injunction against both defendants to restrain them from taking steps to acquire compulsorily certain lands known as Hampstead Park until a writ filed by the company against the defendants can be tried.

I had previously on the 2nd November 1972 granted an ex parte interim injunction restraining both defendants until the 9th November and ordered that the Writ and other relevant documents be served on the defendants.

.....The

The history of the matter as disclosed in the affidavit filed is that on the 5th of July 1971 the Minister of Housing in his capacity as a corporation sole under the Housing Act 1968 entered into an agreement with the plaintiff, a registered limited liability Company, to sell to the Company certain lands part of Hamstead Parish in St. Andrew for \$80,650 payable in instalments. It was a special condition on the contract that if the purchaser failed to establish a Housing Scheme within three years the vendor would have the right to repossess the lands at the purchase price plus accrued interest and an assessment of any interim development. The plaintiff paid his first deposit and was placed in possession of the lands.

Early in 1972 there was a change of Government and the new incumbent of the office of the Minister of Housing in a statement made by him in the House of Representatives on the 28th March 1972 informed the House that the Ministry of Housing had an interest in the Hampstead Park lands which were required for national development and that he was taking the necessary steps to acquire them.

On that very day the Permanent Secretary in the Ministry of Housing wrote to the plaintiff company saying he had been directed to make an offer to repurchase the lands at the same price of \$80,650.00 plus 5%. The plaintiff company rejected this offer.

On the 2nd May 1972 the Minister of Housing made an order under section 4 (1) of the Housing Act 1968 declaring the Hampstead Park lands to be a Housing Area.

On the 2nd June 1972 the plaintiff company paid the Minister of Housing the sum of \$20,000.00 on further account of the purchase price but the Minister refused to accept the said sum and returned it to the company.

The Minister of Housing then put in train the steps necessary to acquire the lands compulsorily. On the 15th August 1972 the Minister of Agriculture in exercise of the powers conferred on him by Section 5 (1) of the Land Acquisition Law, Cap. 204, declared that the Hampstead Park lands were needed for a public purpose, namely for the purpose of housing.

On the 9th of October 1972 the second named defendant the Commissioner of Lands published in the Jamaica Gazette of October 19th a notice under Section 16 (1) of the Land Requisition Law (Cap. 201) to the effect that acting on the direction of the Minister of Agriculture he had taken proceedings for the acquisition of the lands and on the directions of the Minister of Agriculture had taken possession thereof on the 4th October 1972 and that the said land now vested in the Minister of Housing in trust for Her Majesty.

There is exhibited in the affidavit of Leonard Cecil McKenzie, the managing director of the plaintiff company the copy of a notice served on the company under the signature of the Commissioner of Lands calling upon persons interested to appear personally before the Commissioner on the 7th November instant and to state their claim for compensation.

It was these proceedings before the Commissioner which the temporary ex parte injunction granted by me restrained.

In their Writ the company is seeking specific performance of the contract of sale made between themselves and the Minister of Housing on the 5th July 1971 and further or alternatively damages for breach of contract. The company also seeks a permanent injunction to restrain the defendants from dealing with the lands and proceeding with the compulsory acquisition of the lands. A declaration is also sought that the compulsory acquisition proceedings have not frustrated the agreement for sale.

At the hearing before me of the Summons for the grant of the interim injunction the learned Attorney General has submitted that the entire proceedings were misconceived as both defendants are entitled to the protection of the Crown Proceedings Law 1958, and in particular Section 17 (1) thereof which provides that in any proceedings against the Crown the Court shall not grant an injunction or make an order for specific performance and Sec 17 (2) which provides that the Court shall not in any civil proceedings grant any injunction or make any order against an officer of the

Crown if the effect of granting the injunction or making the order would

be to give relief against the Crown which could not have been obtained in

proceedings against the Crown and further that if any action lay it should

have been brought against the Attorney General.

Learned Counsel for the company contended strenuously that the Crown Proceedings Law had no application here as the Minister of Housing having been created by the Statute (vide Sec 3 (1) of the Housing Act 1968) a corporation sole with perpetual succession and a capacity to acquire hold and dispose of lands and other property was acting throughout as a principal and not as a servant of Her Majesty (the Crown) and that the Commissioner of Lands was acting throughout as the agent of the Minister of Housing.

It is perhaps easier to settle the question concerned with the position of the Commissioner of Lands first before dealing with the Minister of Housing.

The Commissioner of Lands is clearly an officer of the Crown within the meaning of the Crown Proceedings Law.

He is appointed by the Governor General acting upon the recommendations of the Public Service Commission, under the provisions of Section 3 (1) of the Crown Property (Vesting) Law 1960. He is a corporation sole and has power to acquire hold and dispose of land and property but he is not given the power to sue nor may he be sued.

It is quite wrong to say that he acted in this matter as the agent of the Minister of Housing. Whatever he did was on the instructions of the Minister of Agriculture who is not a corporation sole but is a Minister of the Crown and the Minister entrusted with the Responsibility for putting in motion the Land Acquisition Law Chapter 204.

Section 6 of this Law reads as follows:-

"6. When ever any land has been so declared to be needed for a public purpose the Minister shall direct the Commissioner to take proceedings for the acquisition of the land"

I am satisfied that the Commissioner entered into possession of the lands and pursuant to the provisions of Sec 16 (1) of the Land Acquisition Law as modified by Sec 25 (2) of the Housing Act 1968 the lands now became vested in the Minister of Housing "in trust for Her Majesty"

.....There

There was some argument as to whether this was the correct interpretation to be placed on Sec 25 (2) of the Housing Act therefore I set out below the respective sections of the two laws:-

Section 16 (1) of the Land Acquisition Law Cap 204 reads thus:-

16. - (1) In every case, so soon as the Commissioner enters into possession of any land in accordance with any of the provisions of this law relating to acquisition, the land shall vest in the Minister in trust for Her Majesty from the date of such entry into possession and a notice to that effect shall be published in the Gazette.

and Section 25(2) of the Housing Act 1968 reads as follows:-

25 (2) . . . For the purpose of the acquisition of any land as aforesaid the Land Acquisition Law shall have effect subject to the modifications that for the reference in subsection (1) of section 16 of such Law to a vesting of the land in the Commissioner of Lands, there shall be substituted a reference to the vesting of the land in the Minister within the meaning of this Act.

In my opinion the words "Minister within the meaning of this Act" simply means "the Minister for the time being responsible for Housing", who in the Act is referred to as "the Minister "(vide Section 3 - (1))

The words used in the section ought only to be given this limited meaning and it would be wrong to say that words should be added such as "for the purposes of this Act" or words deleted.. No where in the section does it say that the words "in trust for Her Majesty" are to be ignored.

The law therefore makes it abundantly clear that when the Commissioner of Lands takes possession of land under the Land

Acquisition Law he does so on behalf of Her Majesty in right of her

Government in this Island.

In my opinion all the evidence in this case points to one

Conclusion only and that is that the Commissioner of Lands acted

strictly within the provisions of the Land Acquisition Law in his

capacity as a servant of Her Majesty in the Government of Jamaica and is entitled to the protection of the Crown Proceedings Law 1958. Accordingly, in obedience to the provisions of Section 17 (2) the Court shall not and will not order an injunction against him.

I turn now to the consideration of the position of the Minister of Housing.

In my view the many authorities cited to me by learned counsel for the plaintiff company indicate quite plainly that the answers to questions as to the status, powers, rights and obligations of a corporation sole created by statute depend almost entirely on the language used in the statute which creates or gives birth to the corporation sole and the greatest care ought to be taken when drawing comparisons between similar bodies and the views expressed by the judges of courts in various jurisdictions. I have read and studied with interest the many cases which were cited before me and discussed with care by learned counsel on both sides. I am indeed most grateful to them.

The approach to the subject taken by the learned Attorney General was most illuminated and the reply by Mr. Hill to the Honourable Attorney General's submission was thought provoking and in many instances the lines of demarcation between the different views were so fine that the result could go either way.

I do not propose embarking on an examination of the law on Crown privileges before and after the Crown Proceedings Law. This law was enacted in Jamaica in 1958 and is the counterpart of the United Kingdom Crown Proceedings Act which was passed in 1947. The English and various Commonwealth Reports cover adequately the law and the approach to it by many eminent Commonwealth Judges. Our own reports also deal with the subject and I will mention two which

were cited by Mr. Hill.

~~1. Lewis v National Insurance~~
~~(1966) 9 W.L.R. 459~~

~~2. Jaundee v Attorney General of Guyana~~
~~(1971) A.C. 972~~
~~(1971) 16 W.L.R. 141~~

~~The important question which must be kept in the forefront as~~

~~I turn to examine the status of the Ministry of Housing is this:~~

Does he function under this Act as an autonomous and completely independent body or does he perform his various functions as a servant or officer of Her Majesty?

The definition of "officer" in the Crown Proceedings Law is:- "officer", in relation to the Crown, includes any servant of Her Majesty, and accordingly (but without prejudice, to the generality of the foregoing provision) includes a Minister of the Crown.

It was Mr. Hill's submission that when a Minister of the Crown is by statute incorporated and made a corporation sole he assumes a different legal status to that of a Minister who has not been incorporated and so when the Minister of Housing entered into the contract with the plaintiff company he did so as principal in his own right and not as agent for the Crown.

I now proceed to a somewhat detailed examination of The Housing Act 1968.

It is useful to start with the title to the Act. It reads thus:-

"An Act to Repeal the Housing Law, 1955 and to provide for the performance by the Minister of the functions hitherto performed by the Director of Housing or by the Governor General in Council under that Law"

In its very first words therefore it seems clear that Parliament intended to provide for one of the Ministers of Government to perform functions previously performed by the Director of Housing who was a paid servant or officer of the Crown, and by the Crown's highest executive, to wit Her Majesty's representative in Jamaica the Governor General of Jamaica.

Section 3 - (1) provides that the Minister for the time being responsible for Housing shall be a corporation sole by the name of the Minister of Housing and by that name shall have perpetual succession with a capacity to acquire, hold and dispose of land and other property of whatever kind.

I accept Mr. Hill's submission that the effect of this is to confer on the Minister for the purpose of the Housing Act a different legal status to that of a Minister who has not been made a corporation sole, but I am unable to accept the proposition that the mere fact of

incorporation by itself puts an end to the relationship of principal and agent in respects of act done by the Minister pursuant to the powers given to him by the Act. In my view whatever functions he performs under the act performed as a servant and agent for the Crown.

It is useful to have a look at the repealed Housing Law of 1955 to ascertain what was the status of the Director of Housing and his relationship to the Crown.

This law repealed the Slum Clearance and Housing Law Cap 360 and dissolved the Central Housing Authority.

It provided for the appointment, for the purposes of the Law, by the Governor General of a fit and proper person to be the Director of Housing.

Section 3 - (2) provided that the Director for the time being shall be a corporation sole and shall have power to acquire hold and dispose of land and other property of whatever kind for the purposes of the law.

Section 3 - (3) provided that the Director may sue and be sued by the name of the Director of Housing.

This provision giving the Director the specific power to sue and the liability to be sued was repealed in its entirety by the Crown Proceedings Law 1958, (vide Section 33). Also repealed was a portion of Section 55 of the Housing Law which had provided that all damages and costs recovered against the Director were to be defrayed from the General Revenue of the Island.

The effect of these repeals of the Housing Law was to bring the Director of Housing squarely within the ambit of the Crown Proceedings Law and although he continued to be a corporation sole with power to acquire, hold and dispose of land he no longer had the power to sue or the liability to be sued. This power and liability were transferred to the Attorney General (vide Section 14 of the Crown Proceedings Law)

This continued to be the position until the repeal of the 1955 Housing Law and the enactment of the 1968 Housing Act.

The 1968 Act contains important transitional provisions, the effect of which are to confer on the Director's successor, the Minister of Housing, the same rights and the same liabilities to which the Director was subject, and these did not include a right to sue or the liability to be sued, which had been positively and directly taken away from the Director by Section 33 of the Crown Proceedings Law, 1958, supra.

It was

It was Mr. Hill's submission that these transitional provisions were to be construed, as applying only to matters pending at the time of the repeal of the 1955 Law and could not be given the wider meaning attached by the Attorney General.

Mr. Hill submitted that the 1968 Act prescribed the rights and liabilities to which the Minister of Housing was subject and that it was improper to invest him generally with the rights and liabilities of the Director of Housing as the law under which the Director was created and functioned had been repealed in its entirety and the legal effect of this repeal was to obliterate the earlier law completely as if it had never been passed, save and except in so far as it affected acts done while it was a subsisting law.

I do not agree with this proposition. The words of the transitional section are:-

62 - As from the commencement of this Act the following provisions shall have effect -

- (a) -----
- (b) -----
- (c) the Minister shall have all the rights, privileges and advantages and all liabilities and obligations, to which the Director of Housing was immediately before the commencement of this Act entitled or, as the case may be, subject;

Had it been the intention of Parliament to limit this provision to matters pending at the time the Act came into force, it would have added to words/this effect but this was not done, and so the Minister of Housing is in the same position as the Director of Housing.

In my view this is conclusive that the Minister of Housing has no power to sue or liability to be sued and that the provisions of the Crown Proceedings Act apply to him therefore the person to sue or to be sued in respect of all matters arising under the Housing Act of 1968 is the Attorney General. Furthermore the provisions of Section 17 apply to the Minister of Housing as they applied to the Director of Housing and the Court cannot grant an injunction against him.

The Honourable Attorney General brought to my attention other sections of the Housing Act 1968 which strengthened his submission that the Minister of Housing, though a corporation sole, nevertheless acted as the servant or agent of the Crown. As this judgment is already overlengthy I do not propose analysing these in detail but merely mention them. They are:-

Section 18 (6)

Section 21 (3)

Section 21 (4)

Section 30 (2)

which sections provide for the recovery of various expenses incurred by the Minister "in the Resident Magistrates Court as a civil debt due to the Crown" thus indicating beyond any doubt that the Minister of Housing acts for and on behalf of the Crown.

For these reasons the application for the grant of an interim injunction against both defendants is refused.

The Summons is dismissed with costs to the defendants and an order for an account to be taken by the Registrar of any loss or damage sustained by the defendants or either of them as the result of the one parte interim injunction ordered by me on the 2nd November 1972 pending the hearing of this summons.

Dated this 13rd day of November 1972

Chief Justice.