

of property (land); whether the Land Acquisition (Public Purposes) Act, Cap 184, Revised Laws, 2000 Edition, is unconstitutional and void because it does not include certain provisions required by the Constitution and should be struck down; whether a declaration of compulsory acquisition of land under the Act is rendered unconstitutional if the Government does not have fund voted by Parliament for the fiscal year to pay compensation; whether the Government had no system in place for payment of compensation within a reasonable time; whether the acquisition of the land to be developed for businesses of a company in which the Government invested was an acquisition for a public purpose; whether the compulsory acquisition initiated by a private individual is an acquisition to be carried out under the Land acquisition (Promoters) Act Cap. 183, instead; whether the purposes stated as “the establishment of infrastructure facilities” in a private business area are public purposes. Land Law: whether beneficial interest under a trust is sufficient to found locus standi for claims under ss: 3 and 17 of the Constitution.

2. This is judgment in a constitutional motion (constitutional application) made under *the Supreme Court (Constitutional Redress and Reference) Rules, 1982*. It concerned two declarations of compulsory acquisition of two portions of a large parcel of land, in Corozal District, Belize. The declarations were made under *s: 3 of the Land Acquisition (Public Purposes) Act, Cap.184, Laws of Belize*, by the Minister responsible for land, the Minister of Natural Resources, the Environment and Industry. Parties agreed that each declaration of acquisition was duly published twice in the Belize Government Gazette as required under *s: 3 of the Act*. The dates of the second and final publications were given as 13.1.2001, for one portion, and 7.7.2001, for the other portion. Under section 3 of the Act, upon the

second publication of each declaration, the respective portion of land would become vested absolutely in the Crown, that is, in the Government of Belize.

3. A declaration by the Minister under s: 3 operates therefore as an order by which the Government compulsorily acquires title and takes possession of private land. The Minister can make a declaration of acquisition or requisition of land only if he considers that the land is required for a public purpose. He may, of course, opt to negotiate sale to the Government by private treaty. This application concerns compulsory acquisition, not compulsory requisition. When a public authority compulsorily takes only possession or use of land it requisitions the land for a public use.

4. The applicant, Best Lines Limited (Best Lines), contended that both declarations of compulsory acquisition of the two portions of land were unconstitutional, or unlawful under the Land Acquisition (Public Purposes) Act. It claimed court relief in the form of upto eight court declaratory orders to those effects, and an order for damages. It did not claim compensation for the acquisition.

5. The two portions of land declared compulsorily acquired were portions of Parcel 738 in Santa Elena Registration Section, Corozal District. Parcel 738 was originally a portion of Parcel 440. The two portions of parcel 738 acquired were subdivided and became Parcel 758, Parcel 768, and Parcel 769. They measured 20 acres, 12.89 acres and 12.80 acres respectively. The total land area acquired was 45.69 acres.

6. Titles to the three parcels have since been registered as belonging to a certain Galleria Maya Limited (Galleria Maya), which has charged each with a loan of US \$3,700,000.00. There has been no evidence that Galleria Maya has paid the Government for the parcels of land although there has been an agreement between them that the Government would acquire the land and sell to Galleria Maya for \$25,000.00 per acre or for \$1,142,754.00, and in any case, Galleria Maya would indemnify the Government against claim for compensation in excess of \$25,000.00 per acre. The three parcels 758, 768 and 769 are said to be prime location land abutting the sea and Santa Elena River on the Belize – Mexico border.

7. ***Preliminaries.***

(1) Joinder of the second respondent.

At the commencement of hearing the application, the court was informed that if the declaratory orders were made and the two portions of land (since subdivided into three parcels) were returned to Best Lines and Universal Imports Limited, proprietary interests and rights of Galleria Maya Limited, not cited as a party to the application, would be affected. The company attended by learned counsel, Mr. Denys Barrow SC, and requested to be heard. I treated the request as an application for joinder of a party. I was satisfied, on the explanation given, that Galleria Maya was a necessary party in order to resolve all the questions in the application. I ordered that Galleria Maya be joined as the second respondent, thereby it was afforded opportunity to present its case and protect its interests.

8. Later there was a further development in the course of the proceedings, Mr. Denys Barrow was instructed to represent the Attorney General as well. The Attorney General was initially represented in court by the learned Solicitor General who later instructed Mr. Denys Barrow.

9. (2) *Locus standi* (or simply standing) of the applicant, Best Lines.

Early in the proceedings, Attorney General filed an application raising a preliminary objection that Best Lines had no *locus standi*, - “a place of standing”, that is, the right to challenge in court the declarations of compulsory acquisition of the portions of land, on the ground that Best Lines was not the holder of the titles to the two portions of land. A written submission for the preliminary objection was filed. The objection has fallen by the wayside. Mr. Denys Barrow did not make the submission in court. On inquiry, he informed the court that he would not insist on the preliminary objection.

10. For the sake of completeness, my view about *locus standi* in this case is as follows. The interests of Best Lines in parcels 758, 768 and 769 are traceable directly to a certain consent order of the Supreme Court made on 12.4.2000, in Action No. 290 of 1998, between Norman Angulo McLiberty as plaintiff, and Michael Arnold and Corozal Free Zone Development Limited, as defendants; and indirectly to Action No. 302 of 1999. Mr. Denys Barrow was the attorney for the defendants in the former action. The relevant term of the consent order beneficial to Best Lines was effected by recording it in a trust

deed dated, 6.9.2000, which made disposition to Best Lines, of rights and interests in, among others, a portion of Parcel 440. That parcel was subdivided, one of its subdivisions became Parcel 738 which was the portion held in trust for Best Lines. Then parcel 738 was subdivided again and two portions of it which the Minister acquired were subdivided into Parcel 758, Parcel 768 and, Parcel 769. They are the objects of this application. Universal Imports Limited, was the holder of the legal title to the entire Parcel 440. Its title was, of course, subject to the trust under which beneficial interests in the portions to be subdivided was given to Best Lines.

11. The above facts are relevant to this application and to sections 17 and 20 of the Constitution which Best Lines relied on for its claim in this way. Section 17 protects, “*property of any description...and interest in or right over property of any description...*” The equitable beneficial interests of Best Lines in the three parcels of land obviously fall within the description, “*property of any description ... and interest in or right over property of any description...*” The equitable interests of Best Lines are therefore protectable as matters of constitutional rights under s: 17 of the Constitution.

12. Complementary to section 17 is section 20 of the Constitution which provides that: *“If any person alleges that any of the provisions of sections 3 to 19 of this Constitution has been, is being, or is likely to be contravened in relation to him,...then, without prejudice to any other action with respect to the same matter which is lawfully available, that person ...may apply to the Supreme Court for redress”*. Best Lines has alleged that the equitable beneficial interests belonging to it have been interfered with by the declarations made by the Minister, contrary to the protection afforded by s: 17(1) of the Constitution. In my view, Best Lines is entitled, under s: 20, to *“apply to the Supreme Court for redress”*, if it can prove the beneficial interests and the interference alleged.
13. Over the years, case law has generally lowered the threshold for sufficient interest in the subject matter of a court case that confers *locus standi*. – see for example, *R v Inland Revenue Commissioners, ex parte National Federation of Self-Employed and Small Businesses [1982] AC. 617*, where it was held by the House of Lords (UK), that whereas in simple cases it was appropriate to decide the question of *locus standi* at the outset as a preliminary issue, in

involved cases it was appropriate to decide the question together with the factual and point of law questions. The case demonstrated that a claim to *locus standi* should not be lightly dismissed, and not always at the outset as a preliminary question.

14. Currently, *r: 56.2 of the Supreme Court (Civil Procedure) Rules, 2005*, has extended the scope of the standing of a litigant considerably, reflecting the development in case law. Under **r: 56.2 (a)**, “*any person who has been adversely affected,...*” has standing. Although the rule about standing usually concerns judicial review proceedings, I consider it applicable to public law proceedings generally.

15. ***The Background.***

(1) The contentions in details.

The grounds of the contentions of the applicant were that both declarations of compulsory acquisition of the original two portions of land, were “unconstitutional” because: 1) the Land Acquisition (Public Purposes) Act under which the declarations were made did not include a provision required by the Constitution at s:17(1)(a), for “*the*

principles on which and the manner in which reasonable compensation is to be determined... and given within a reasonable time"; 2) the Act did not include provisions required by the Constitution at s: 17(b) for the right of a claimant to access to the courts for; (i) the determination of any question as to whether the acquisition was carried out for a public purpose, and (ii) for enforcing the right to compensation; 3) the Government did not have, "a system in place to ensure that reasonable compensation [would] be paid to the applicant for its property within a reasonable time"; 4) the Government, "used a system [which] allowed it to delay or withhold payment of compensation as long as the Government wished"; 5) the Government did not have fund authorized by the Legislature to pay compensation and had no capacity to pay compensation when the two declarations of compulsory acquisition were made; 6) the Government had failed to pay compensation for lands acquired earlier, and did not intend to pay for the applicant's land presently acquired; and 7) the Government failed to pay compensation within reasonable time.

16. The applicant also contended that the purpose for the compulsory acquisition, which the applicant stated as, "the establishing of sewage

management plant for the establishments within the Zone and the Hotel Complex and Galleria Maya Complex”, did not qualify as a public purpose. The declarations by the Minister actually stated the purpose as, “the establishment of infrastructure facilities”. This contention is an alternative ground, in the event the court held that the Land acquisition (Public Purposes) Act under which the declarations for compulsory acquisition were made was not unconstitutional.

17. These eight contentions were originally verbose and too long, stretching over four pages. They have since been somewhat better identified in the submission by learned counsel Mr. Dean Barrow SC, for the applicant. Mr. Dean Barrow and learned counsel Mr. Dons Waithe, did not draw up the case papers, they took over the proceedings at a later stage from another attorney.

18. At the hearing, Mr. Dean Barrow in his submission raised three new points of law. First he submitted that the Land Acquisition (Public Purposes) Act, by an amendment providing in s: 17(3) that, “*the award [of the board of assessment] may be enforced in the same manner as a judgment of the Supreme Court to the same effect*”, still

did not provide for an effective relief to ensure payment of compensation within a reasonable time as required by the Constitution, enforcement of payment has to be under the Crown Proceedings Act, and was not effective enough. So, he submitted, the Land Acquisition (Public Purpose) Act is currently still inconsistent with the Constitution. Secondly, he submitted that the land was needed for private businesses of a private individual, so the land was acquired for private purposes and not for public purposes; it should have been acquired under the Land Acquisition (Promoters) Act Cap. 183, Laws of Belize, not under the Land Acquisition (Public Purposes) Act. Thirdly, Mr. Dean Barrow asked for additional consequential court relief orders that: the Land Acquisition (Public Purpose) Act be struck down altogether; the entries made in the Land Register as the result of the compulsory acquisition be cancelled; and the Registrar of Lands be directed to make new entries returning the two portions (which became three parcels) of land to the title holder before the compulsory acquisition.

19. The three submissions introduced from the bar table unwritten amendments to the application. Learned counsel Mr. Denys Barrow

SC, a very experienced counsel, did not take up procedural issue about the amendments, he restricted his submission to the substantive questions. I have to assume that Mr. Denys Barrow did not regard the amendments as prejudicial to the conduct of the cases for his clients, the Attorney General and Galleria Maya.

20. All the eleven contentions may be summarised to only four main questions at issue, namely: 1) whether the Land Acquisition (Public Purposes) Act under which the declarations were made is unconstitutional and wholly void, and a court declaration may be made to that effect, and the Act may be struck down by a court order as contended; 2) whether by making the two declarations of compulsory acquisition in the circumstances of this case, the Minister violated an entrenched fundamental constitutional right of the applicant, the right to protection from arbitrary deprivation of one's property, provided for in ss: 3 and 17 of the Constitution; 3) whether the purposes for which the declarations of compulsory acquisition of the parcels of land were made were public purposes, and 4) whether the Minister ought to have made the two declarations under the Land Acquisition (Promoters) Act, and not under the Land Acquisition

(Public Purposes) Act. Most of the eight declarations asked for in the application were just points to be used in submission by counsel.

21. ***The Facts.***

The material facts in the application are as follows: On 15.9.2000, Glenn D. Godfrey & Co Attorneys wrote to the Hon. Said Musa, the Prime Minister of Belize, on behalf of their client named “Galleria Maya Consortium”, inviting the Government of Belize to participate in intended business ventures of the consortium. The attorneys stated that the consortium was comprised of Sol Melia Group in Spain, MDA Group in the UK, Dragados Group in Spain, Panels Group in Mexico and the Provident Group in Belize. The business ventures would be situate along the common border of Belize and Mexico adjoining the area commonly known as the Corozal Commercial Free Zone. The businesses to be carried on would include, “the development in the Zone of world class attractions including, a theme park, casino gaming, nightclubs, lounges, quality restaurants, high-end shopping malls, data processing, marina and sports”.

22. The attorneys requested from the Prime Minister, in particular, that the Government, “facilitates the development of the project [by] the provision of adequate roads, public utilities and other infrastructures for the Corozal Free Zone, and [by] the acquisition of land to the north and south of the Zone for locating water, sewer, electrical and other public utilities and for public parking”. They explained that the project would include the construction of a new bridge over the Santa Elena River on the Belize – Mexico border, and that portions of Parcel 440, Block 1, Santa Elena Registration Section, would be acquired by the Government, “for the citing of sewage management plant for the establishments within the Zone and the Galleria Maya Project”. The attorneys proposed that in order, “to facilitate financing”, the Government would sell the land acquired to Galleria Maya for, \$25,000.00 per acre, or for \$1,142,754.00. They also assured the Prime Minister that Galleria Maya and a certain St. James National Building Society would indemnify the Government against compensation claim in excess of \$25,000.00 per acre, payable to the owners of the lands. The letter of invitation was signed by Mr. Glenn Godfrey.

23. By a letter dated 26.10.2000, the Prime Minister accepted the invitation by the attorneys, and agreed on behalf of the Government, to purchase 40% shares in Galleria Maya at US \$4,000,000.00, and to guarantee the debt of Galleria Maya on conditions that; Galleria Maya would eventually buy back the shares that the Government would have acquired in Galleria Maya, and the debt of Galleria Maya would “be fully collateralised”. Two other commitments and conditions in the letter of the Prime Minister were stated in these words: “The Government will assist in the provision of adequate roads, public utilities and other infrastructures for the Zone, including the construction of a new access road to allow traffic destined for Galleria Maya to avoid the congestion that presently exists in the Zone, and [in] the acquisition of land to the North and South of the Zone for locating water, sewer, electrical and other public utilities and for public parking, provided the Consortium pays the cost of the acquisition, and the Government investment in infrastructure or public utilities is fully self-liquidating”. There were follow-up letters which are not necessary to quote.

24. Up to this point, 26.10.2000, in the negotiation with the Prime Minister, there was in fact, no such entity as Galleria Maya Limited or Galleria Maya Consortium. The company, Galleria Maya Limited, was incorporated in Belize almost one year later on 2.10.2001. A company with a slightly different name, Gallerra Maya Limited, had been incorporated in the Bahamas on 11.10.2000, fifteen days before the Prime Minister accepted the invitation to the Government to participate in the business ventures. The company in the Bahamas, then changed its name to Galleria Maya Limited on 24.10.2000, just two days before the acceptance of the invitation. So, Galleria Maya Limited, the Belize Company, and Galleria Maya Limited, the Bahamas company, were, at the time that the Prime Minister accepted the invitation, just proposals to be realised.
25. On 2.11.2000, seven days after the acceptance by the Prime Minister of the invitation by the attorneys, the chairman of Corozal Free Zone Management Agency, Mr. Florencio Marin, “petitioned” the Minister of Natural Resources, the Environment and Industry, requesting him, “to acquire 25.71 acres... for the purpose of establishing a sewage management plant for the establishments within the Zone and the

Hotel Complex and Galleria Maya Complex...” The Corozal Free Zone Management Agency is a statutory corporation designated under Cap. 278, Laws of Belize, as a Commercial Free Zone Agency, and authorized to do business free of customs duty. The Hotel and Galleria Maya Complex that the chairman referred to were of course, proposals upto that point.

26. The business relationship between Corozal Free Zone Management Agency and Galleria Maya was not clear from the case papers. I noted, however, that the Agency’s businesses were situate on a large area of land on the border, and that the portions of land to be acquired for the business ventures of Galleria Maya were said to adjoin the land of the Agency to the north and to the south. Moreover, for the purpose of the Government providing sewage management plant, supplies of utilities, roads and other services, the Government and Galleria Maya regarded the business areas of the Free Zone Agency and of Galleria Maya as one area.
27. The Minister granted the petition of the chairman, and proceeded to publish twice in the Gazette the declarations of compulsory

acquisition of the two portions of Parcel 738, Block 1, Santa Elena Registration Section. I repeat here that Parcel 738 was originally a subdivision of Parcel 440, and that the subdivision, Parcel 738, was again subdivided, and two portions of it were acquired and subdivided into parcels 758, 768 and 769. This application is in regard to the land area now identified as the three parcels.

28. There has been no question that the declarations of compulsory acquisition of the two portions of land were duly published in the Gazette, but there has been a question as to whether the purposes stated therein as the, “establishment of infrastructure facilities,” were public purposes, a requirement under s: 17 of the Constitution and s: 3 of the Land Acquisition (Public Purposes) Act, for the Minister to make a declaration of compulsory acquisition of property, land in this application.

29. I shall use in this judgment, the publication of compulsory declaration in respect of the portion measuring 25.71 as a representative publication. The publication stated as follows:

LAND ACQUISITION (PUBLIC PURPOSES) ACT

CHAPTER 150 - LAWS OF BELIZE

DECLARATION UNDER SECTION 3

It is hereby declared in accordance with the provision of Section 3 of the Land Acquisition (Public Purposes) Act, Chapter 184 of the Laws of Belize, that all interests or estates in or over the land hereinafter described in the schedule below are being acquired for a public purpose.

- (a) The land is situate in the Corozal Free Zone Area Corozal District
- (b) The description of the said land is set out in the schedule below.
- (c) The map showing the location of the said land may be seen at the Ministry of Natural Resources, the Environment and Industry, Lands and Surveys Department, or the Lands and Surveys Office in Corozal Town, Corozal District, between the hours of 8:00 am to 12:00 noon and 1:00 pm to 5:00 pm. Mondays to Thursdays and between the hours of 8:00 am to 12:00 noon and 1:00 to 4:00 pm on Fridays.
- (d) The said interests or estates in and over the said land are required for a public purpose viz: ESTABLISHMENT OF INFRASTRUCTURE FACILITIES

Date: 24th November, 2000.

(PATRICIA MENDOZA((MS.)
Chief Executive Officer/
Permanent Secretary

SCHEDULE

All that piece or parcel of land situate in the Corozal Free zone containing 25.71 Acres and being a portion of Block No. 1 Parcel 440 situate in Santa Elena Registration Section, Corozal District”.

30. After the Minister acquired the two portions of Parcel 738 and had them subdivided into three parcels of land, the Government on 2.11.2001, transferred the parcels to Galleria Maya. There has been no evidence that Galleria Maya has paid for the parcels of land. The three parcels have each been charged with a loan of US\$3,700,000.00 in favour of Provident Bank and Trust Limited. The loan was presumably taken by Galleria Maya. When this application was made the parcels of land had not been developed for the purposes for which they were said to have been compulsorily acquired or at all. Mr. Godfrey has deposed that due to bombing of some twin towers in New York City, USA, on September 11th 2001, some of the intended investors desired that the business ventures be scaled down.

31. From correspondence exhibited to the affidavits, there have been negotiations for compensation between Best Lines and the Government. Best Lines has not been paid compensation for the parcels of land. The negotiations and compensation are not issues in this application.

32. ***Determination.***

(1) General: Fundamental rights and freedoms under the Constitution.

A declaration of compulsory acquisition or requisition of one's land by a public authority such as the Minister in this case, is in the nature of an order; it is a very strong action indeed, given that the right to protection from arbitrary deprivation of one's property is a fundamental right entrenched and protected by the Constitution. The strong action is generally justifiable on the ground of public interest, the general good of the public.

33. Public interest may require for instance, that tax be imposed and collected to pay for services for the public, penalty requiring payment of money or forfeiture of property be imposed for a criminal wrong committed, and interference with property be carried out under several

laws. Specifically relevant to this application, public interest may also require that land be compulsorily acquired for public interest, that is, for the advancement of the general good of the general public for such things as: defence, public order, public health, public transportation, urban and country planning, economic development, public settlement, public amenity, the protection of the environment and others. The Constitution in *s: 17 (2)* permits such deprivation or interference with one's land.

34. However, the Constitution requires that there must be a specific law, that is, an Act authorising the compulsory acquisition of property, for a public purpose, and there must be in that law measures to moderate the strong action of compulsory acquisition or requisition so that if compulsory acquisition is necessary, it is carried out in a fair and just way to the individual landowner or person who has interest in the land.

35. The details of the constitutional measures are set out in the provisions of *s: 17 of the Constitution*. Procedurally, the authority authorised to compulsorily acquire property may only do so in accordance with

“the “principles...and the manner...”, laid down by the law authorizing the acquisition, for the determination of reasonable compensation and for payment of it within a reasonable time. Further, the provisions of s: 17 of the Constitution require that the Act under which the acquisition is carried out must secure, that is, provide to the claimant, *“a right of access to the courts”* for: 1) determining whether the acquisition was carried out for a public purpose; 2) establishing his claim to title or interest in the property, if any; 3) determining the amount of compensation, if the question arises; and 4) enforcing the right to compensation, if necessary.

- 36 Those provisions about protection measures are at the centre of the challenge by the applicant. It contended that the *Constitution of Belize* protects as a fundamental right, the right not to be deprived of one’s property in an arbitrary manner, despite that, the Minister made the two declarations that the applicant said, arbitrarily deprived it of its interests in the land in the way that contravened the provisions of the Constitution, and of the Land Acquisition (Public Purposes) Act; and in any case, the Act was inconsistent with the Constitution and therefore unconstitutional.

37. The respondents deny that the two declarations by the Minister and the subsequent transfer of the parcels of land to Galleria Maya, violated the provisions of ss: 3 and 17 of the Constitution, protecting the fundamental right not to be arbitrarily deprived of one's property, or the provisions of the Land Acquisition (Public Purpose) Act, the particular Act applied by the Minister when he made the two declarations of compulsory acquisition.
38. It is appropriate then, to set out ss: 3 and 17, of the Constitution, and examine them together with the relevant provisions of the Land Acquisition (Public Purposes) Act. ***Section 3 of the Constitution*** makes the following declarations:

“3. Whereas every person in Belize is entitled to the fundamental rights and freedoms of the individual, that is to say, the right, whatever his race, place of origin, political opinion, colour, creed or sex, but subject to respect for the rights and freedoms of others, and to the public interest, to each and all of the following:

(a) life, liberty, security of the person, and protection of the law;

(b) freedom of conscience, of expression and of assembly and association;

(c) protection for his family life, his personal privacy, the privacy of his home, and other property and recognition of his human dignity; and

(d) protection from arbitrary deprivation of property,

the provisions of this Part shall have effect for the purpose of affording protection to those rights and freedoms, being limitations designed to ensure that the enjoyment of the said rights and freedoms by one person does not prejudice the rights and freedoms of others or the public interests”.

39. The provisions are the guiding general principles about what are fundamental rights and freedoms, to be borne in mind when courts are called upon to decide a complaint about encroachment on any of the fundamental rights and freedoms. The right to protection from arbitrary deprivation of property is one such right. Note that care has

been taken in the provisions to ensure that the fundamental rights and freedoms are subject to limitations that ensure that the enjoyment by one person, of those fundamental rights and freedoms, does not interfere with the enjoyment by another, of the same fundamental rights and freedoms; and that due consideration has been given to the protection and the advancement of public interest. In the case of the right to protection from arbitrary deprivation of property, consideration has been given to public interest by allowing for compulsory acquisition or requisition when the property is required for a public purpose.

40. In this application the question is whether the fundamental right to, *“protection from arbitrary deprivation of property”*, has been violated by the Minister when he made the two declarations of compulsory acquisition and acquired the two portions of land, and if not, then whether the right to reasonable compensation to be determined and given within reasonable time has been violated.
41. Section 17 of the Constitution is the protection measures section, it affords protection to the right to property in these words:

“17(1) No property of any description shall be compulsory taken possession of and no interest in or right over property of any description shall be compulsory acquired except by or under a law that –

(a) prescribes the principles on which and the manner in which reasonable compensation therefor is to be determined and given within a reasonable time; and

(b) secures to any person claiming an interest in or right over the property a right to access to the courts for the purpose of –

(i) establishing his interests or right, if any;

(ii) determining whether that taking of possession or acquisition was dully carried out for a public purpose in accordance with the law authorising the taking of possession or acquisition;

(iii) determining the amount of the compensation

to which he may be entitled; and

(iv) enforcing his right to any such compensation”.

42. ***Determination.***

(2)The grounds relied on.

(2.1)Is the Land Acquisition (Public Purposes) Act inconsistent with ss:3 and17 of the Constitution?

The first contention by the applicant was that, the Land Acquisition (Public Purposes) Act was unconstitutional, a declaration should be made to that effect, and the Act should be struck down altogether.

The grounds were that: 1) the Act did not comply with s:17(1)(a) of the Constitution which required that a law authorising compulsory acquisition of property must also prescribe principles on which and the manner in which reasonable compensation was to be determined and given within a reasonable time; 2) the Act did not provide for a right of access to the courts for determining whether the purpose for the acquisition was a public purpose, and so, did not comply with s: 17(1)(b) (ii) of the Constitution which required that the Act would also provide for a right of access to the courts for that purpose; and 3) the Act did not provide for a right of access to the courts for enforcing

the right of the claimant to compensation and so, did not comply with s: 17 (1) (b) (iv) of the Constitution which required that the Act, would also provide for a right of access to the courts for that purpose.

43. Also connected to the grounds of the first contention was the additional point of law in the submission by Mr. Dean Barrow that the Land Acquisition (Public Purposes) Act currently still does not provide for an effective manner of enforcement of payment of compensation money due from the Government, because effective manners of execution of a judgment order, such as by, a warrant of execution for attachment of chattels and other properties, an order of *mandamus* and a contempt order are not available under the Crown Proceedings Act, Cap 167, Laws of Belize, which a claimant of compensation against the Government is currently required to use.
44. The above points of contention obviously derived from the fact that the system of Government and laws in Belize are based on the Constitution of Belize, which is a written Constitution, and which declares the principle of the supremacy of the *Constitution in s: 2(2)*, in these words:

“2. This Constitution is the supreme law of Belize and if any other law is inconsistent with this Constitution, that other law shall, to the extent of the inconsistency, be void”.

45. Case law guides us that the provision about the supremacy of the Constitution is not applied in a belligerent manner when other laws are tested against the Constitution. The presumption is always in favour of the constitutionality of an Act or other law, until the contrary has been proved. The burden to rebut that presumption rests on he who asserts inconsistency with the constitution – see *Ramesh Mootoo v Attorney General of Trinidad and Tobago (1979) 30 WIR 411, Attorney General v Antigua Times [1975] 3 All ER 81, or (1975)21 WIR 560* and also *Attorney General v Jobe [1985] LRC (Const) 556.PC*. Moreover, if only a part of the law impugned, is found to be inconsistent with a provision of the Constitution, that law is held void only to the extent of the inconsistency with the Constitution, the rest of the law not inconsistent with the Constitution, will not be held void, unless it is impossible to sever the inconsistent part because it is inextricably bound up with the whole law so as to

make it impossible for the rest of the law to survive the severance – see *Kanda v Attorney General of Malaya [1962] A. C. 322*, and also *Attorney General of Alberta v Attorney General of Canada [1947] A. C. 508*.

46. So even at this stage of the determination, I am able to say that the entire Land Acquisition (Public Purposes) Act, may not necessarily be struck down in the event the court decides that the provisions required by s:17 of the Constitution have not been included in the Act, or that some provisions of the Act are inconsistent with s:17 of the Constitution. The court may consider it appropriate simply to sever or modify the inconsistent provisions and include the provisions omitted so as to construe the Act with, “*modifications, adaptations, qualifications and exceptions as may be necessary to bring [the Act] into conformity with*” s:17 of the Constitution. That power of the court is given in *s: 134 of the Constitution*, which has been held to apply to laws existing then, and to laws made after independence day, 21.9.1981.

47. All the grounds raised for the contention that the Land Acquisition (Public Purposes) Act was unconstitutional because it did not comply with the requirements in ss: 17(1)(a) and (b) of the Constitution had been raised together with other grounds in an earlier case, *San Jose Farmers Co-operative Society Limited v Attorney General (1991) 3 Bz LR 1(Belize)*, and were fully considered and decided by the Court of Appeal of Belize. All the grounds in this application based on section 17 of the Constitution must be answered according to the decision in *San Jose Farmers* case.

48. In an even earlier case, *Banana and Ramie Products Company Limited v Ministry of Lands and Natural Resources (1989) 3 Bz LR 107, (Belize)*, the Court of Appeal had set the tone when it decided a related question, namely, the question as to whether the board of assessment that the Minister was obliged to appoint under the Act, “*as soon as it [became] necessary*”, to make an assessment of compensation and an award, was a court with concurrent jurisdiction with the Supreme Court. The appellant had applied to the Supreme Court for leave to bring judicial review proceedings to review the decision of the board that it had no power to determine whether the

compulsory acquisition of land in the case was for a public purpose, and the alternative decision assessing and making an award of compensation, in the event its decision about the question of a public purpose was wrong. The Court of Appeal held that the board was not a court with concurrent jurisdiction. It granted leave for the judicial review proceedings to review the decision of the board. The court also quashed the award of compensation.

49. In the *San Jose Farmers* case, the appellants filed a claim for a court declaration that a declaration of compulsory acquisition of some 76.8 acres of the appellants' land by the Minister was made in violation of the constitutional rights of the appellants and was void. They also claimed damages for breach of a contract of sale of the land which they said, they had entered into with the Government. A preliminary point was taken as to whether the compulsory acquisition was contrary to s: 17 of the Constitution and void. The Court of Appeal held that some of the provisions of the Land Acquisition (Public Purposes) Act as it stood in September 1991, were indeed inconsistent with s: 17 of the Constitution, and that omission from the Act of certain provisions required by the Constitution also made the Act

inconsistent with the Constitution to the extent of the omissions. The court, however, did not strike down the Act, instead it effected alterations to it by authority of *s: 134 of the Constitution* which authorized courts to construe existing Acts or any other laws, “*with such modifications, adaptations, qualifications and exceptions as may be necessary to bring them into conformity with the Constitution*”. The detailed determinations by the court of the questions raised in that case, and again in this case, follow below.

50. (2) *The grounds relied on:*

(2.2) *The requirement to include in the Act, “ principles on which and the manner in which reasonable compensation is to be determined and given within reasonable time”.*

The first important decision of the Court of Appeal in the *San Jose Farmers* case, was the unanimous decision that the requirements in what has become the current *s: 19 of the Land Acquisition (Public Purposes) Act*, that certain factors therein be included or excluded by the board of assessment when making assessment of compensation, except the requirement that the value of the land two years prior to the

declaration of acquisition be taken, were requirements that made good “*principles*” on which reasonable compensation would be determined. The Court held that the section met the requirement in *s: 17(1)(a) of the Constitution* that principles on which reasonable compensation was to be determined must be included in the law authorising acquisition of property. The court proceeded to delete the provision about taking the value of the land two years prior. I am bound by that decision. In any case, my own view is that taking into consideration all the factors in *s: 19 of the Act*, but the value of the land two years prior to the acquisition, and excluding all the factors excluded by *s: 19*, comprise good principles on which a fair and reasonable compensation may be determined. Accordingly, I reject the ground that the current Land Acquisition (Public Purposes) Act is unconstitutional because it does not prescribe the principles on which compensation is to be determined.

51. The Court of Appeal also decided unanimously, that the provisions of what has become the current *s: 6 of the Act*, which enjoined an authorised officer to enter into negotiations with the owner of the land and anyone claiming an interest as soon as a declaration was made by

the Minister, and to ascertain the price at which the owner of the land would be willing to sell it, and further, that the provisions of *ss:11 to 17* regarding prompt appointment of a board of assessment if necessary, and the procedure required of the board in making assessment, were all clear and concise, and were together a good manner in which reasonable compensation was to be determined and given within reasonable time. So, the court held that the Land Acquisition (Public Purpose) Act as it stood in September 1991, did not fail to prescribe the “*manner*” in which reasonable compensation was to be determined and given within reasonable time. Again I am bound to follow that decision of the Court of Appeal. Accordingly, I reject the ground that the current Act is unconstitutional because it does not include in its provisions the manner in which compensation is to be determined.

52. (2) *The grounds relied on:*

(2.3) *The requirement to include in the Act the right to access to the courts.*

The Court of Appeal further made determinations regarding the requirements in *s: 17 (1)(b)* of the Constitution, that the law

authorising compulsory acquisition of property must secure to a person claiming interest in the property acquired, the right of access to the courts for the purposes outlined in subsections (b) (i), (ii), (iii) and (iv), that is, for: the determination of his interest in the property, land in this application, if any; the determination of the question as to whether the acquisition was for a public purpose; the determination of the amount of the compensation; and the enforcement of payment of compensation.

53. The decision regarding *s: 17(1)(b)* was a unanimous one, that it was a constitutional requirement that the right to access to the courts for the stated purposes must be included in the Act that authorised the compulsory acquisition, reliance on access to the courts provided for in other laws was not sufficient compliance with section *17(1)(b) of the Constitution*. So, the Court held that the Land Acquisition (Public) Purposes Act, as it stood in September 1991, was inconsistent with the Constitution to the extent that it omitted to provide for the right of the claimant to access to the courts for all the four stated purposes. Two of the three judges added what are currently *sections 3(5), 8(3), 17(3) and 18*, and modified *section 3(1)*, so as to satisfy the

requirements in *s: 17(1)(b) of the Constitution*. Smith JA dissented to the additions. He said that the additions were the functions of Parliament and should be left to Parliament to make.

54. In all, in *the San Jose Farmers* case, the Court of Appeal made the following alterations, modifications and adoptions. Part of s: 3 was altered to read, “... *and the declaration [of the Minister] shall be prima facie evidence that the land to which it relates is required for a public purpose*”. Originally it stated that, the declaration was, “*conclusive evidence...*” The alteration made the provision consistent with the requirement of the Constitution that the law authorising acquisition must provide for the right of the claimant to access to courts for the purpose of determining whether the acquisition was for a public purpose. Access to court would be pointless if the declaration by the Minister was, “*conclusive evidence*” that the land was required for a public purpose.

55. The Court of Appeal then made a corollary alteration by adding what is currently *s: 3 (5)* which provides that: “*Any person claiming an interest in or right over land will have a right of access to the courts*”

for the purpose of determining whether the acquisition was duly carried out for a public purpose in accordance with the Act”.

Further, the court introduced what is currently **s: 8(3)** which provides that: *“Any person claiming an interest in or right over the land shall have a right of access to the courts for the purpose of establishing his interest or right, if any”.*

56. Then, very important to us for answering the question of access to the courts for enforcement of payment of compensation, the Court of Appeal introduced what is currently **s: 17 (3)** which states that: *“The award [by the board of assessment] may be enforced in the same manner as a judgment or order of the Supreme Court to the same effect”.* The court considered the added provision sufficient to meet the requirement of **s: 17(b)(iv) of the Constitution**. I am bound by the decision that the modification made the Act not lacking in providing for the right of access to the courts for the enforcement of payment of compensation.

57. Since the decision of the Court of Appeal in ***San Jose Farmers*** case, Parliament has enacted an amending Act, No. 16 of 1992, which

introduced into the Land Acquisition (Public Purposes) Act, the modifications and additions to the Act, made by the Court of Appeal in the case. It is the Act as amended and now Cap 184, Revised Edition 2000, that the applicant challenged as unconstitutional.

58. (2) *The grounds relied on:*

(2.4) *Whether the manner of enforcement under the Crown Proceedings Act, Cap. 167 is ineffective.*

The details that I noted in the first added point of law in the submission by Mr. Dean Barrow were that even after the modifications to the Land Acquisition (Public Purposes) Act by the Court of Appeal in 1991, and by the subsequent amendments made by the Amendment Act in 1992, in particular by introducing the current s: 17 (3), the Land Acquisition (Public Purposes) Act still does not provide an effective manner of enforcement of payment of an award of compensation, “*within a reasonable time*”, as required by the Constitution, the Act was therefore unconstitutional and void and must be struck down. Section 17 (3) which Mr. Dean Barrow referred to, provides that: “*The award [by the board of assessment] may be enforced in the same manner as a judgment or order of the Supreme*

Court to the same effect". The deficiency that he pointed to was that enforcement by a court of a judgment debt owed by the Government is limited to the procedure under the Crown Proceedings Act, which procedure did not include, attachment of a warrant of execution, compulsion by an *order of mandamus* and by a court contempt order.

59. Under the Crown Proceedings Act, an application is to be made to an officer of the court who then issues a warrant which is served on the Government Department concerned or on the relevant officer or the Attorney General. The judgment creditor then expects payment to be made, and he waits. That, Mr. Dean Barrow submitted, is not necessarily effective in Belize to produce payment within a reasonable time.

60. The point in the submission has been fully answered by the Privy Council in an earlier case from Granada, *Jennifer Gairy (as administratrix of the estate of Eric Gairy) v the Attorney General of Granada [2001] UKPC 30*. In the case, The Privy Council held that any difficulties arising from the usual manner of execution could be overcome because s. 16 of the Constitution of Granada authorised

court to, “*fashion remedy*”, so as to give an effective relief to a claimant who sought to enforce payment of compensation within a reasonable time under the Constitution. In my view, that means the court will not, if circumstances require, be limited to the manner of execution specified in the Crown Proceedings Act. That decision applies to Belize because s: 16 of the Constitution of Granada is the same as s: 20 of the Constitution of Belize which provides:

“20 (1) If any person alleges that any of the provisions of sections 3 to 19 inclusive of this Constitution has been, is being or is likely to be contravened in relation to him..., then without prejudice to any other action with respect to the same matter which is lawfully available, that person may apply to the Supreme Court for redress”.

61. In the *Gairy v Attorney General* case, it was agreed that property belonging to Mr. Eric Gairy, a former Prime Minister of Granada had been unconstitutionally confiscated. A court order for compensation

in the sum of EUC \$3, 649,414.00 was made against the Government. It made a serious effort including borrowing EUC \$1,000,000.00, and made payment. The sum of EUC \$2,400,000.00 remained owing. The appellant applied for *an order of mandamus* directed to the Minister of Finance. The order would be enforceable by contempt order. The Prime Minister deposed in defence, that the revenue of the Government of Granada could not permit payment of a lump sum that large. The trial court and the Court of Appeal held that an order of *mandamus* could not issue against a minister of the Crown. The Privy Council allowed the further appeal and held that *an order of mandamus* could issue in such a case by the authority of the Constitution. However, it stated a way out as follows:

“If the exigencies of public finance prohibit the immediate payment to the appellant of the full sum outstanding, the Attorney General, representing the Minister of Finance, may apply to the judge for approval of a schedule of payment by instalments”.

That procedure suggested is in fact applicable even to enforcing debts against a private individual in the usual process of execution on a judgment or court order.

62. On the authority of *Gairy v Attorney General* case, I reject the additional point in the submission that the Land Acquisition (Public Purpose) Act does not in its current form provide for an effective manner of enforcing payment of compensation within a reasonable time. The Crown Proceedings Act must be construed with such modifications, adaptations and exceptions that bring it into conformity with the provision of the Constitution that allows the court to fashion an appropriate relief.

63. I do mention, however, by *orbita dicta*, that the Court of Appeal having decided that the right to access to the courts required by the Constitution is a right to have the courts determine all the four matters enumerated in section 17(1)(b) of the Constitution, if the questions arose for determination, the Court of Appeal could have, in effecting modification, introduced also a provision that an appeal from the decision of the board of assessment would lie to the Supreme Court,

not to the Court of Appeal. That, in my view, would make it clear and emphasise the fact that a board of assessment which may be appointed by the Minister, is an administrative tribunal, not a court in the courts system. It would be more consistent with the earlier Court of Appeal judgment in the *Banana and Ramie Products* case in which the Court of Appeal held that a board of assessment was an administrative tribunal and not a court with concurrent jurisdiction with the Supreme Court. See also the judgment in *Hinds, Hutchinson, Martin and Thomas v R [1975] 2WLR 366 PC*.

64. (2) *The grounds relied on:*

(2.5) *Delay in payment of compensation.*

The third and fourth contentions raised the same point of law and of facts presented in different ways. I consider them together. The third contention was that the declarations of compulsory acquisition were unconstitutional because the declarations were made when the Government did not have, “a system in place to ensure that reasonable compensation [would] be paid to the applicant for its property within a reasonable time”. The fourth contention was that the declarations were unconstitutional because the Government, “used a system which allowed it to delay or withhold payment of compensation as long as

the Government wished”. Both grounds were about not making payment within a reasonable time.

65. I accept that the law is that delay in making payment of a compensation sum for compulsory acquisition of land is a violation of constitutional right. The Constitution requires that compensation be, “*given within a reasonable time*”. Lord Mackay of Clashfern made the point in, the Privy Council case, ***Bloomquist v Attorney General of the Commonwealth of Dominica 35 WIR 162***, where there had been a delay of twelve years. He stated at page 167:

“This delay, however, had the effect that the acquisition was not duly carried out in accordance with the law authorising acquisition. There was accordingly a breach of the landowner’s constitutional right...”

However, despite its view that the delay was a violation of constitutional right, the Privy Council was unable to apply the Constitution because the Constitution was not applicable yet, an earlier colonial Ordinance applied.

66. The circumstances in this case are different from those in *Bloomquist Case*. In this case, the stage had not been reached when payment was due. The applicant asserted prematurely that the Government acted without a system which ensured payment within a reasonable time, and at the same time asserted a contradiction that the Government acted by a system which allowed it to delay payment. Nevertheless, the central issue was delay.
67. In my determination of the two contentions, the first point that I mention is that the applicant did not explain what it meant by “a system.” If it meant a set of actions or ideas, or a methodical manner of carrying out actions, then I would say the Government had a system in place to ensure that reasonable compensation would be paid within a reasonable time. The methodical manner, “the system”, was in the Land Acquisition (Public Purposes) Act. It did not allow the Government to withhold payment of compensation as long as it wished. The entire statutory process of identifying the land, treating with the owner and persons who have interests in the land, making assessment, making payment or enforcing an award or court order for payment and appealing to the Court of Appeal, is clearly set out in the

Land Acquisition (Public Purposes) Act. So, the Act currently lays down a system by which reasonable compensation may be agreed or determined, and is payable within a reasonable time. The statutory system is such that it denies the Government the indulgence, “to withhold payment as long as it wished”.

68. According to *s:6(1) and (2) of the Act*, negotiation about compensation may start even before the declaration of compulsory acquisition has been made. In any case, “*as soon as a declaration has been published an authorised officer shall, without delay, enter into negotiations or further negotiations for the purchase of the land...*”. He starts by ascertaining who the owner of the land is and who else has interest in the land. Ascertainment of interests, agreement as to the price, and payment may well take place at that early stage and the matter ends quickly.

69. If in the declarations of compulsory acquisition which are the subject of this application, questions arose about the interests of the claimants or about the sum to be paid as compensation, then *Parts III, IV and VI of the Act*, which provide for appointment of a board of

assessment, the principles and manner used to make an assessment and the making of an award, would be utilised immediately. *The award [of the board would then], be enforced in the same manner as a judgment or order of the Supreme Court.* An appeal against the determination of the board on any question of disputed compensation would lie to the Court of Appeal – see *ss: 17 (3) and 24 of the Act.*

70. If there was a complaint that the law was not being followed with the result that the interest of the claimant was being unfairly refused, and unreasonable and unfair assessment of compensation was being made, delay was being occasioned, or even a complaint that the acquisition was not for a public purpose, then the complainant would bring a claim to the Supreme Court. If the applicant desired a standing body or a committee to wait for any question that would arise in future acquisition, that could not be the basis of faulting the process or “system” set out in the Land Acquisition (Public Purpose) Act. There is no constitutional requirement for such an arrangement. The applicant has not shown that the process or “system” set out in the Act “allowed the Government to withhold payment of compensation as long as it wished”, or that the process set out in the Act was in any

way inconsistent with the Constitution. The third and fourth grounds are rejected.

71. (2) *The grounds raised.*

(2.6) *That compulsory acquisition could not be carried out when Parliament did not vote fund for it and the Government did not have fund.*

The fifth, sixth and seventh grounds also raised the same points of law and related facts; and were in fact related to the third and fourth. I accept, on the affidavits filed, that Parliament did not include in the Appropriation Act for the relevant fiscal year, a sum of money to be paid out as compensation for lands compulsorily acquired during the fiscal year. I do not, however, accept that it follows that acquisition of land in the fiscal year would be unconstitutional. The necessary sum could be appropriated in the following year. That view was expressed by the Supreme Court of Ireland in, *Byrne v Ireland and the Attorney General [1972] IR 241*, where it was stated that its judgment for compensation could be met with fund to be voted by Parliament later. The view was approved by the Privy Council in the, *Gairy v Attorney General* case.

72. Besides, if it was absolutely necessary to pay the compensation immediately, the Minister might have used contingencies fund which *s: 117 of the Constitution* allows, and which is provided for in *s: 6 of the Finance and Audit Act, Cap 15 Laws of Belize*. It is difficult to imagine that the authority of a government to act in the public interest and compulsorily acquire private property if necessary, can be completely fettered because the government has no fund presently. A government cannot wait in some cases such as when public health is at risk or when public security requires. The Constitution recognises that. It demands no more than, “*reasonable compensation*”, which is to be “*given within reasonable time*”. Reasonable time must mean what is reasonable time in all the circumstances in the particular case, and prevailing in the particular country.
73. There has also been evidence showing that the Government would sell the land to Galleria Maya, and in any case, the company agreed to indemnify the Government against payment of compensation in excess of \$25,000.00 per acre. The parcels of land acquired have already been transferred to Galleria Maya who has borrowed a large sum or sums and charged each parcel with US\$3,700,000.00. That

suggested that, in the normal course of events, the Government through Galleria Maya, has already secured the necessary fund for the payment of compensation once agreed or assessed and awarded. The eagerness of government officials to have the applicant agree to a sum for compensation suggested confidence that payment would be made promptly, let alone, within a reasonable time.

74. The assertion that the Government had not paid for lands acquired earlier, and did not have the capacity to pay for lands acquired, and intended not to pay for the acquisition in this case, are factually inaccurate. With due respect to Mr. Manuel Esquivel, I do not attach much weight to his affidavit to the extent that he deposed that he had personal knowledge of the poor financial situation of the Government. His knowledge was about the situation some years back when he was the Prime Minister. That may have changed. Governments plan yearly expenditure based on estimates of expected revenue, not usually on surplus, that is, revenue already available. I do not understand the affidavit to mean that the Government would not be able to estimate and collect in the following year, sufficient revenue to

pay compensation for lands acquired. There has been no evidence to show that revenue of the Government would remain static.

75. That the Government failed to pay to the applicant compensation within a reasonable time is also factually erroneous. The stage for payment of compensation had not been reached when this application was filed. The correspondence exhibited to the affidavit of Mr. Waithe showed instead, that government officials pursued negotiation for compensation with more expedition than the attorneys for Best Lines. Attorneys for Best Lines seemed to be more interested in getting the parcels of land back, not compensation. They proceeded to pursue that objective by this constitutional challenge which asked for court declarations that the declarations of compulsory acquisition by the Minister were void, and damages for the wrong. There has been no claim at all for payment of reasonable compensation within a reasonable time.

76. The last ground of the application was that the declarations were unconstitutional because the purpose for the compulsory acquisition of the portions of land, “did not qualify as a public purpose”. The applicant stated the purpose as, “the establishing of a sewage

management plant for the establishments within the Zone and the Hotel Complex and Galleria Maya Complex”. The actual statement of purpose in the declarations by the Minister in the Gazette was, “the establishment of infrastructure facilities”.

77. Given the purpose stated by the applicant, its complaint was not about vagueness or any other inadequacy in the description of the public purpose in the declarations. The complaint was that a particular purpose, “the establishing of sewage management plant in the Zone...”, was not a public purpose. For the distinction between a vague and inadequate description of a public purpose in a declaration and the purpose itself not being a public purpose, see – *Williams v The Government of the Island of St. Lucia [1969] 14 WIR 177*, judgment of the Privy Council. In the case, the Privy Council held that it was not necessary that the statement of purpose be a full description of the purpose intended. Their Lordships stated:

‘The development of tourism’ although containing a degree of vagueness was nevertheless a sufficient statement of a public purpose.”

They explained further, that what was required was:

“...a statement of the object in view... and not a disclosure of the means by which the objective is to be achieved. It was the purpose and not the method which had to be disclosed in the declaration”.

78. In this case, the purpose stated in the Gazette, namely, “the establishment of infrastructure facilities”, was a composite of purposes. The evidence showed it to include: building adequate roads and access roads, building water, sewer and electricity facilities, and building vehicle parking areas for customers who would go to the businesses in the Corozal Free Zone area and Galleria Maya business area. The statement of purpose clearly included the one purpose, “the establishing of a sewage management plant...”, that the applicant singled out.

79. The contention was that because those infrastructure facilities were intended to benefit private business establishments and would be located on land that would have become private land, the

infrastructure facilities were intended for private purposes and not for public purposes, and so the two portions of land were acquired not for a public purpose, but for private purposes.

80. The submission cannot be accepted. First, it was wrong about the facts. The infrastructure facilities, including the sewage management plant, were intended to benefit the businesses, but also intended for use by customers, the general public, and therefore also intended to benefit the general public. Secondly, the Government intended to invest in Galleria Maya businesses the sum of US\$4,000,000.00, representing 40% of the entire investment; the businesses of Galleria Maya were not wholly private enterprises.

81. On question of law, the applicant relied on what it said was private ownership of the businesses in the area, as a criteria for determining that, establishing a sewage management plant for servicing the businesses was not a public purpose. That is not the correct way in law for determining what is a public purpose in regard to compulsory acquisition of land. It is the purpose for which the land will be used, not ownership of the land after acquisition, that the Constitution requires as a determining factor, and so it is the purpose for which the

land will be used that is the relevant consideration. It is also not a determining factor whether a private individual as opposed to Government, that will carry out the intended public purpose. A purpose is a public purpose if it is intended to result or results in a benefit or advantage to the public. That statement is my modification of the definition of the phrase, “public use”, in the Constitution of Antigua and Barbuda. I would add that a purpose is a public purpose if it significantly benefits or otherwise advances the interests of the community even if it may also advance an interest of an individual.

82. The expression, a public purpose, is a wide one and covers a large range of facts in which interests of the public are identifiable. It is difficult to define such an expression. The Privy Council recognised the difficulty as early as in the appeal case from India in 1914, the case of *Hamambai Framjee Petit v Secretary of State for India [1914] L. R. Vol XLII...* Lord Dunedin was content to adopt the view of the trial judge in India, Batchelor. J. that:

“...it is enough to say that in my opinion the phrase [public purpose] whatever else it may mean, must

include a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned.”

83. Another often cited definition came in another, but a much later case from India, *Narayan Singh v Bihar (1978) AIR 136*. At page 138, S. K. Jha J stated:

“The objective test...which has since been judicially recognised is that whatever furthers the general interests of the community as opposed to the particular interests of the individuals must be regarded as a public interest. Public purpose may be achieved through private enterprise as well as through any public agency... If the acquisition is for a public purpose, the consideration that the State has undertaken the task at the instance of a private entrepreneur or agency or a private institution is not germane”.

84. In several cases from the Caribbean, the question as to what a public purpose is has been consistently decided and is well settled. The judgments in some of the cases are strong persuasions to this court.
85. A case that had the most similar facts to the facts of the claim in this application is the appeal case, *Spencer v Antigua and Barbuda (Attorney General [1998] ECS. C.J 19*. In the case, the Government of Antigua and Barbuda entered an agreement with a company, Asian Village Antigua Limited. The company was to carry out a massive project which would include the construction of hotels providing 1000 rooms, and of casinos, a golf course, retail shops, other hotel and resort related commercial business buildings and residential buildings. The Government would acquire Guiana Island and other lands and transfer them to the company for \$15 million, to be paid over ten years. The Government also promised special arrangements for the construction of infrastructure, and promised several privileges such as tax concessions and exemptions, financial incentives, and others.
86. Pursuant to the agreement Parliament passed a resolution confirming the agreement, and authorising the acquisition of the lands. Later a

declaration of compulsory acquisition of the land under the Land Acquisition Act of Antigua and Barbuda was published in the Gazette by the Minister responsible. The public purpose stated was, “the promotion and development of tourism and supporting tourist related activities”. Subsequently the Government sought to pass an Act in the terms of the agreement. The leader of opposition and other persons applied to court for a court declaration that, the agreement was unconstitutional on the grounds of fraud, discrimination against other citizens and that the acquisition of the lands was not for, “a public use”, as required by the Constitution. They also brought a second constitutional application in which they sought a declaration that the bill intended to be enacted was unconstitutional because it was *ultra vires*, and the Governor General was not entitled to sign it. The two actions were consolidated. The defendants applied for an order to strike out the actions on the grounds that each did not disclose a cause of action. The trial judge ruled that no cause of action was disclosed in each application, and struck out both actions.

87. The Court of Appeal dismissed the appeal for several reasons. It held among others, that, “the promotion and development of tourism and

supporting tourist related activities”, were public purposes in Antigua and Barbuda. Regarding the involvement of a private company in carrying out the projects that would advance the stated public interest, the court stated:

“A public purpose may be achieved through private enterprise at the instance of a private entrepreneur whose sole aim may be to make profit”.

88. A rather extreme case was, ***Coconut Beach Residence Ltd v Dominica (Minister for Agriculture) [2001] ECSCJ. 66.*** The facts are these. Land belonging to Coconut Beach Hotel Limited adjoined land belonging to Coconut Beach Residence Limited, the applicant. A single road from the main road passed through both lands and ended at a public beach. The two hurricanes of 1995 eroded a portion of the road which included land belonging to Coconut Beach Residence Ltd. The hotel established a new portion of the road, it included part of land belonging to the applicant. The applicant claimed and succeeded in trespass. The Hotel continued to use the road despite the successful

claim in trespass. The applicant filed contempt proceedings. The Minister then published a declaration of acquisition of land including that part of the applicant's land which was the subject of trespass. The declaration stated that the acquisition of the land was, "for a public purpose, to wit, a public car park". The applicant applied for, among others, a court declaration that the declaration of compulsory acquisition by the Minister was made in circumstances of bad faith, and to aid contempt of court order, not for the declared public purpose of providing a public car park, and was unconstitutional. The applicant also impugned the land Acquisition Act of Dominica as inconsistent with the Constitution which provided for a law that ensured payment of adequate compensation within a reasonable time. For reliefs, the applicant asked for reasonable compensation, damages and such other suitable reliefs. The court dismissed the application, holding that the bad faith alleged was not pleaded and proved, and that acquiring land for a public car park was an acquisition for a public use, and further still, that the Land acquisition Act was not unconstitutional. The decision about public purpose was based on the provision of the Act that the declaration by the Minister was,

“conclusive evidence”, that the land was required for a public purpose.

89. In Belize, the words “prima facie evidence”, have been substituted for “conclusive evidence”, to make the provision consistent with the Constitution. There are several aspects of the judgment in the *Coconut Beach* case that are unsatisfactory in my view; I do not regard it as persuasive.

90. Other Caribbean cases are: *Home Industries Association v the Government of Granada* 14 WIR 411, *Mills v Attorney General of St. Christopher* (1993) 45 WIR 125, and *Winward Properties v Government of St. Vincent* (1966) TWLR 279. P.C.

91. In this application, my determination about the final contention is that the statement, “establishment of infrastructure facilities”, was a sufficient statement of the public purposes intended to be achieved and for which the two portions of land were acquired.

92. *The grounds raised.*

(2.7) Application of Land Acquisition (Promoters) Act.

The second point of law added by the submission by Mr. Dean Barrow was a very important one in my view. He submitted that in Belize there is the Land Acquisition (Promoters) Act, therefore acquisition of land on behalf of a private corporation should be carried out under that Act, not under the Land Acquisition (Public Purposes) Act. He argued that the businesses of Galleria Maya, even of the Corozal Free Zone Agency, were private businesses for profit not for public purposes. He argued further, that the fact that the parcels of land were immediately transferred from Government to Galleria Maya, and the projects have not been commenced even two years after the acquisition of the land, showed that the acquisition was not carried out in good faith for public purposes.

93. Mr. Dennys Barrow answered by relying on the judgment of the Supreme Court of Mauritius (an appeal court) in the case of, *Harel Freres Ltd v Minister of Housing, Lands and Town and County Planning [1987] LTC (Const) 754*. That court held among others, that the Minister was not obliged to acquire the appellant's land under

s: 6 of the Mauritius Land Acquisition Act, which section was about, *“acquisition on behalf of third parties”*, instead of under *“s: 8 which governed acquisition by the Government”*. I note that the court was considering two provisions in one Act, not two distinct Acts.

94. I accept the lead point in the submission by Mr. Dean Barrow, that in Belize, compulsory acquisition by or on behalf of an individual must be carried out under the Land Acquisition (Promoters) Act, and not under the Land Acquisition (Public Purposes) Act. That is the sole intention that emerges from the entire Land Acquisition (Promoters) Act which is a mere five sections. There must be a purpose, an intention, for enacting the Land Acquisition (Promoters) Act in addition to the Land Acquisition (Public Purposes) Act. The intention must be that acquisition of land by individuals shall be in accordance with the procedure set out in the Act, which procedure includes the more stringent stage of approval by the National Assembly. Moreover, it is a principle of interpretation that an Act cannot be construed as meaningless.

95. The Land Acquisition (Promoters) Act describes the acquisition under it, as an acquisition by a promoter. The individual applies to the Minister responsible who then orders an inquiry to determine whether the purpose for the acquisition, *“is likely to prove useful to the public or a substantial class or section of the public”*. If that be the determination of the inquiry, then the, *“record of [the] inquiry shall be laid on the table of the National Assembly and the National Assembly may approve or may decline to approve the compulsory acquisition.. Provided that the National Assembly shall not approve the acquisition...unless it is satisfied from the record of the inquiry that the purpose for which the land is required by the promoter is likely to prove useful to the public or to a substantial class or section of the public”*.

96. In my view, the Land Acquisition (Promoters) Act is an acknowledgment that achieving and securing public interests are normally the responsibilities of the State, in this case, the Executive and the Legislature, who may compulsorily acquire land for public purposes. Accordingly, the Act seeks to ensure that if an individual wishes to achieve a particular private benefit by causing land

belonging to another to be compulsorily acquired, and in return offers responsibility for providing a particular useful purpose to the public, he has to satisfy the State that he indeed offers, “*a purpose [which] is likely to prove useful to the public or to a substantial class or section of the public*”- see *s: 3*, in particular *subsections (1), (4), (7) and (8)*.

97. Despite accepting the submission that acquisition of land in Belize by or for an individual must be under the Land Acquisition (Promoters) Act, I do not say that this application must succeed on that ground. Immediate transfer of land acquired by the Government to a private individual may suggest bad faith. In this case, however, the acquisition of the land by the Minister was for an entity which the Government agreed to invest up to 40% in. The acquisition was not by or for a private individual for private purposes, although the initiative came from Galleria Maya when it was proposed as a private entity.

98. In *the Harel Fereres Ltd* case, acquisition of land by the Government and acquisition by an individual were provided for merely in different sections namely, s: 6 and s: 8 of the same Act authorising acquisition

of land in Mauritius. The relevant sections were not quoted to enable me to assess whether the intentions in the sections were not different. The Supreme Court of Mauritius held that s: 6, “*did not lay down a procedure for compulsory acquisition which was particular to the section*”; and in any case, the court held that it had not been proved that the acquisition was made on behalf of private promoters or developers. I shall not regard the case as persuasive.

99. I agree that the possibility exists of abuse of the power to acquire land for a public purpose. Land could be acquired by the Minister purportedly for a public purpose, and transferred to someone for a private purpose. An amendment to the Act could be made to require the Government to return the land to the owner if the public purpose is not pursued over a period or has failed. That would be consistent with the constitutional right to property. Section 10 about abandonment is not adequate.

100. It seems that this application might have succeeded if the applicant accepted that the Land Acquisition (Public Purposes) Act Revised Edition 2000, Laws of Belize, was not inconsistent with the

constitution, and that the infrastructure facilities intended were for the benefit of the public, that is, for public purposes; and the applicant limited its case to the rather large size of the land acquired for establishing infrastructure facilities for the projects. It is doubtful that the entire 45.69 acres were needed for the stated public purposes. The Minister committed himself to the public purposes to be achieved by the “establishment of infrastructure facilities” only. Land required for building the hotel complex and the other business buildings would seem to be for purposes outside “infrastructure facilities”. Evidence would be required to prove that all the 45.69 acres were required for infrastructure facilities. A question of constitutional fundamental right was involved, the respondent would be bound to prove that every square inch of the land was required for a public purpose declared. There has been some evidence in the letter from Mr. Michael Arnold to the Prime Minister that a company connected to him had donated two plots. There was also evidence that the joint venture between Galleria Maya and the Government was scaled down. Evidence from experts might have shown that less than 45.69 acres were required for the public purposes represented by the expression, “the establishment

of infrastructure facilities”. That aspect of the case was not pursued, the opportunity was lost.

101. ***Orders Made.***

My final determination is that the application has failed on all the grounds. The court declines to make any of the declarations requested by the applicant. Instead the court makes the following declarations:

101.1. The Land Acquisition (Public Purposes) Act, Cap 184, Revised Edition 2000, provides for principles on which and the manner in which reasonable compensation may be assessed and given within a reasonable time, the Act is not unconstitutional on that ground.

101.2. The Land Acquisition (Public Purposes) Act includes provisions for the right to access to the courts for the determination of the question as to whether an acquisition of land by the Minister is

for a public purpose, and for enforcing payment of compensation within a reasonable time; the Act is not unconstitutional on the grounds that it does not provide for those purposes.

101.3. The Land Acquisition (Public Purposes) Act, at s: 17 (3) provides for effective manners of enforcing payment of compensation; any inadequacy under the Crown Proceedings Act is cured by ss: 20 and 134 of the Constitution which authorise court to fashion appropriate remedy so as to give an effective relief for a breach of a constitutional right.

101.4. The Government did not apply a system which allowed it to withhold payment of compensation as long as it wished; the two declarations published on 13th January 2001, and on 7th July 2001, of compulsory acquisition of the two portions of land were not unconstitutional on that ground.

101.5. The purpose for the compulsory acquisition of the two portions of land, stated as the, “establishment of infrastructure facilities”, is a composite of public purposes for which the Minister was entitled to make declarations of acquisition under s: 3 of the Land Acquisition (Public Purposes) Act.

101.6. The declarations of compulsory acquisition of the two portions of land (now three parcels) which declarations were published twice; on 13.1.2001, for one portion, and on 7.7.2001, for the other portion, vested the three parcels absolutely in the Government of Belize; subsequent transfer of the land to Galleria Maya did not vitiate the titles conferred on the Government by s: 3 of the Land Acquisition (Public Purposes) Act.

101.7. In Belize, a private individual desirous of acquiring land compulsorily must proceed to acquire it under the Land Acquisition (Promoters)

Act, Cap. 183, and not under the Land Acquisition (Public Purposes) Act, Cap. 184, unless the Government, local authority or any other public authority will participate in the public purpose for which it is desired to compulsorily acquire the land.

102. All is not lost. The applicant is entitled to reasonable compensation to be given within a reasonable time. The compensation may be agreed. The Government has shown willingness to agree a sum for compensation. Failing agreement, the Minister will appoint a board of assessment to make an award of compensation. The money is supposed to come from Galleria Maya who bought the land from the Government, and in any case, bound itself to indemnify the Government against a claim for compensation in excess of \$25,000.00 per acre. If the Government has already paid US\$4,000,000.00 as its investment in Galleria Maya, it is likely that the money and other monies will be available to pay compensation within a reasonable time. Moreover, two portions of land have already been sold to Galleria Maya. The three parcels from the portions have been charged

with the sum of US\$3,700,000.00 each. Compensation sum is of course, the reasonable value of the land, not necessarily a sum agreed to between the Prime Minister and Galleria Maya.

103. The application of Best Lines is dismissed. Given that the land area acquired was likely to be more than required for the declared public purposes, I decline to order costs against the applicant, each party will bear own costs.

104. Delivered this Wednesday the 30th day of April, 2008
At the Supreme Court
Belize City

Sam Lungole Awich
Judge
Supreme Court