

IN THE SUPREME COURT OF BELIZE, A.D. 2010

CLAIM NO. 929 OF 2009

SAMUEL BRUCE

Claimant

BETWEEN AND

**THE ATTORNEY GENERAL
THE MINISTER OF NATURAL RESOURCES
AND THE ENVIRONMENT**

Defendants

—

BEFORE the Honourable Abdulai Conteh, Chief Justice.

Mr. Said Musa SC for the claimant.

Ms. Priscilla Banner, Deputy Solicitor General with Ms. Magali Perdomo and Mr. Samuel Sheppard.

—

JUDGMENT

This case is really about more than the petulant retort often heard between neighbours concerning the siting of a project that may be of benefit to the whole community; when the neighbour (or person) whose land or backyard is chosen to house the project could declaim “Not in my back yard!” or NIMBY for short.

2. This claim, in substance, raises serious legal issues concerning the decision of the second defendant, the Minister of Natural Resources and the Environment, who is responsible for land matters in Belize, to acquire

compulsorily, nearly half of the nine acres of the claimant's land for the purpose of handing this over to the Roman Catholic Mission to expand its Mount Carmel Primary School in Benque Viejo Del Carmen in the Cayo District. This decision literally puts the proposed school in Mr. Samuel Bruce's backyard and divides his land into two.

3. Mr. Samuel Bruce is the owner of a parcel of land comprising approximately nine acres. He bought this land in 1991 and lives together with his family in a portion of the land and since June 2007 he has been investing and working on a project to build a hotel on the north-west corner of the land; and a water and entertainment park on the back portion of the land which comprises about 4.4 acres.
4. On **6th January 2009**, the second defendant wrote to the Chief Executive Officer in his Ministry in the following terms:

LAND ACQUISITION (PUBLIC PURPOSES) ACT,
CHAPTER 184 OF THE LAWS OF BELIZE,
REVISED EDITION 2000

CHIEF EXECUTIVE OFFICER,

Having considered all the facts of the case particularly the purpose for which the land described in the schedule hereto ought to be acquired is intended to be utilized, I am of the opinion that this is a public purpose within the meaning of Section 4 of the Land Acquisition (Public Purposes) Act, Chapter 184 of the Laws of Belize, Revised Edition 2000.

Please cause a declaration to be published in the Government Gazette as required by Section 3 of the said Act.

Date: Jan 6/09

G Vega
(Hon. Gaspar Vega)
Minister of Natural Resources
and the Environment

SCHEDULE LS 7503/190

***ALL THAT** piece or parcel of land containing approximately 4.4 Acres of land and being part of Block No. 528. The said parcel of land (4.4 Ac) is bounded on the East by Lot No. 48, 49, 50, 51, 52 and 53, on the North by a road reserve, on the West by the remainder parcel of Block No. 528 and on the South by Block No. 544 of Entry No. 1154 Reg. No. 12 dated 11th February 1991 at the Office of the Commissioner of Lands and Surveys, in the city of Belmopan, Cayo District and is more particularly described and delineated as follows:*

Commencing at the Northwest corner of Lot No. 53 of Entry No. 1154 Reg. No. 12 on grid azimuth 180° 40' 18" for a distance of 109.83 meters (which is the Southwest corner of Lot No. 48) and hence for a distance 189.14 meters on grid azimuth 270° 39' 16" to a point and hence on grid azimuth 27° 15' 18" for a distance of 122.88 meters approximately to a point and hence for a distance of 134.14 meters to the Northwest corner of Lot No. 53 which is the point of beginning.

5. This letter or certificate by the Minister is exhibited as **MR 1** to the affidavit of Mr. Manuel Rodriguez. It may be noted that on the date of the letter/certificate, **6th January 2009**, the Minister, the second defendant in these proceeding stated "Having considered all the facts of the case particularly the purpose for which the land ... ought to be acquired is intended to be utilized ..." Quite what "all the facts of the case" were are no where disclosed apart

from the Minister stating that he was of the opinion that the (acquisition) is for *“a public purpose within the meaning of section 4 of the Land Acquisition (Public Purposes) Act, Chapter 184 of the Laws of Belize, Revised Edition 2000”*, (the Act hereafter). What is indisputable and it has not been urged or argued otherwise for the defendants, is that on 6th January 2009, Mr. Bruce knew nothing officially of the impending fate hovering over the other half of his land as presaged in the closing sentence of the Minister’s letter, nor had he, in fact, by that date made any representation or given the opportunity to make one to the Minister regarding his land. But the minister nonetheless stated in the letter that he had **“considered all the facts of the case ...”**.

6. In due course, following the minister’s instructions contained in his letter of **6th January 2009**, the Chief Executive Officer in the second defendant’s Ministry caused declarations to be published on 10th and 21st January 2009 respectively, in the **Belize Gazette** pursuant to section 3 of the Act stating that the portion of Mr. Bruce’s land (more particularly described in the schedule to the declaration) was being acquired for a public purpose, viz, public school. It is this portion, 4.4 acres in all, that is the subject of these proceedings.

7. Published as well with the first declaration as Notice No. 10 in the **Gazette** of 10th January 2009, was the statutory notice pursuant to section 4 of the Act, giving notice that *“it appears to (the second defendant) that all or a portion of the land described in the schedule (to the notice) is likely to be acquired for a public purpose and that it is necessary to make a preliminary survey and other investigations on the land.”* The notice was given under the hand of the second defendant and **dated 5th January 2009**. The notice in the Gazette was addressed to the claimant, “Mr. Samuel Bruce”, who was described as “the owner or occupier or person interested in the land described in the

Schedule". The Schedule to the Notice was the same as the Schedule to the Declaration – LS 7503/190 describing the portion of the claimant's land which is the subject of these proceedings.

8. As a result, Mr. Samuel Bruce, the claimant, launched the present claim; and by these proceedings, he seeks judicial review of the Minister's decision to compulsorily acquire a portion of his land (4.4 acres).
9. Mr. Bruce seeks specifically, a declaration that the Minister's decision to compulsorily acquire his property was an error of law, unreasonable, abuse of power, based on bad faith and arbitrary.
10. Mr. Bruce accordingly seeks an order of certiorari to quash the said decision.

The Evidence

11. Although the issues raised in the claim relate strictly to the interpretation and application of the relevant sections of the Act, they however have underlying constitutional ramifications. However the issues are best considered, in my view, in their factual evidentiary matrix.
12. Four affidavits were filed by the claimant in support of his claim.
13. Three affidavits with exhibits were filed on behalf of the defendants, although the second defendant did not file any.
14. It is to be noted that although the second defendant's letter or certificate to the CEO in his Ministry was dated **6th January 2009**, both the **declaration** pursuant to section 3 and the **statutory notification** to the claimant pursuant to section 4 of the Act, were however made on **5th January**

2009. That is to say before **6th January 2009** the Minister had decided, on **5th January 2009** to compulsorily acquire Mr. Bruce's land.

15. Mr. Bruce had been in possession of his nine acres of land since 1991. His family residence and the BJ Institute which he manages are in the front of his property abutting Arenal Road in Benque Viejo del Carmen Town. He has on the north-western corner of his land, work in progress for the construction of a "stone wall" hotel. Mr. Bruce contracted a company called Hermanos Lodge to do this work. In addition to the "stone wall" hotel on the north-western portion of his property, Mr. Bruce also had plans for the back portion of his property comprising 4.4 acres, on which he hoped to build a Water and Entertainment Park. Mr. Bruce says in his affidavit dated 12th November 2009, that he tried to enlist the support of the Area Representative for his projects for the land and at meeting with Area Representative on Independence Day, 21st September 2008, he took the opportunity to discuss his development plans and that the Area Representative expressed his approval and verbal support. Mr. Bruce states that he subsequently entered into arrangements with contractors to develop the Water and Entertainment Park. Although its provenance is not clear or stated, Mr. Bruce exhibited a plan layout of the park concept as **Exhibit SB 2**.
16. It is evident that Mr. Bruce had plans for the back portion of his property (the 4.4 acres, the subject of this litigation). He exhibited to his fourth affidavit in these proceedings filed on 22nd February 2010, photographs of his property, including the hotel complex under construction before the acquisition and the foundation of a swimming pool under construction on the back portion of his property.
17. However, somewhat perplexingly, Mr. Bruce states in para. 11 of his said affidavit as follows:

“11. *However the Area Representative has let it be known that his government intends to give the said property to Deacon Cal the Manager of Mount Carmel Roman Catholic School in Benque Viejo del Carmen for an infant school. The Mount Carmel R.C. Church Diocese has already been provided with (8) eight adjoining lots for the building of an infant school to complement their established Primary School in Benque Viejo del Carmen.*”

18. Mr. Bruce makes the same point again in para. 3 of his third affidavit filed on 26 January 2010. In this affidavit he deposes as follows:

“2. *In refer (sic) to paragraph 8 of the Affidavit of Mr. Manuel Rodriguez the Lands Commissioner filed herein and dated the 21st January 2010 and state that the first official notice of the Acquisition I received was on the 3rd April 2009 when the same was handed to me by Mr. Rodriguez.*

3. *Prior to that on the 12th January 2009. I did hear the Hon. Erwin Contreras making a public announcement on Benque Viejo Cable T.V. of the proposed acquisition of a portion of my property for an infant school for the Mount Carmel R.C. parish.* (Emphasis added).

19. A less than satisfactory aspect of this case, at least, from the evidential point of view, is that there is nothing in evidence from either the second defendant himself, nor the Area Representative. There is therefore no refutation of Mr. Bruce’s averments in relation to these two gentlemen

regarding the acquisition of his land. The defendants, in particular, the second defendant, it would seem, are content to rely on the affidavit of the CEO in his ministry, Mr. Manuel Rodriguez.

20. Mr. Bruce also exhibited to his second affidavit filed on 9th December 2009, copies of Land Rent Statements dated 20th April 2009, from the second defendant's Department of Lands and Surveys, to the Mount Carmel Catholic Church. This evidently is to substantiate the fact that Mount Carmel had in fact been provided with eight lots of land to build an extension to its school or an infant section of its school since 12th September 2002: see in particular, para. 11. of Mr. Bruce's first affidavit, and paras. 2, 3 and 4 of the affidavit of Mr. Omir Yam.
21. Somewhat implausibly, Mr. Rodriguez states in para. 29 of his affidavit for the defendants regarding land the Mount Carmel Church had had since 2002, as follows:

“29. The Chief Executive Officer also informed the Attorney-at-Law that the eight (8) lots referred to as being owned by the church would be too small to accommodate a new primary school and that it was the Ministry's understanding that the lots were being returned to their original owners. Thus the 4.4 acres would best suit the purposes of construction of a new school since the church had no other suitable land to build on.”

22. But Mr. Omir Yam, the Lands Inspector for Cayo District in the second defendant's Ministry, in relation to these lots of land granted to the Mount Carmel Church, however, states at para. 4 of his own affidavit as follows:

“4. *Also on the 7th December, 2009 the Commissioner of Lands and Surveys wrote to the Mount Carmel Roman Catholic Church informing the church that Lease No. CY539 of 2002 in respect of lot nos. 330, 331, 332, 333, 352, 353, 354 and 355 has been terminated since December, 2nd 2009 as term of lease had expired. A copy of the letter is now shown to me and is exhibited hereto and marked “OT3”.*

OT3 exhibited to Mr. Yam’s affidavit is a letter from the second defendant’s ministry to the Mount Carmel Catholic Church terminating the lease in respect of the lots the church had had since 2002 for the reason that the lease had expired.

23. It is not unreasonable to conclude from this piece of evidence that indeed, the Mount Carmel Roman Catholic Church had **land**, some eight lots in total, from the Government of Belize since 2002 to build a school in the vicinity of Mr. Bruce’s property. Again, somewhat perplexingly, this land was evidently deliberately abandoned by the Church, either by non-payment of the lease rent due thereon or by renunciation of its rights to the land, just before, if not in tandem with, the second defendant’s decision to compulsorily acquire Mr. Bruce’s property. Indeed, as the letter dated 7th December 2009, on the letterhead of **Our Lady of Mount Carmel Catholic Church**, under the hand of the pastor and addressed to the second defendant stated:

7th December, 2009

*Hon. Gaspar Vega
Minister of Natural Resources
Belmopan
Belize*

Dear Sir:

I, Father Mark Wendling, Pastor of Our Lady of Mount Carmel Parish in Benque Viejo Del Carmen, hereby renounce any and all rights given to lots number 330, 331, 332, 333, and lots number 352, 353, 354, and 355 respectively.

All these lots are located in Benque Viejo Town.

Thanks in advance for your assistance.

Fr. M. Wendling

*Fr. Mark Wendling
Pastor
Benque Viejo Del Carmen*

This letter is exhibited to Mr. Yam's affidavit. Quite what provoked the renunciation of all rights to these eight lots is not apparent, but one is left to wonder if the prospect of getting Mr. Bruce's land had factored into this.

24. I find the reasons offered by both Mr. Rodriguez (in para. 29 of his affidavit) and Mr. Yam (in para. 4 of his affidavit) unsatisfactory and contradictory in explaining why the church had to "lose", if that is the appropriate word in the circumstances, the eight lots it had acquired since 2002. Indeed, Fr. Wendling in his letter to the second defendant stated

categorically that the Church was renouncing any and all rights of the church over the said lots.

25. What is manifest however from the evidence is that land **was** available to the Mount Carmel Church. But for reasons stated in para. 11 of Mr. Bruce's affidavit of 12 November 2009 and para. 3 of his affidavit of 26th January 2010, the decision was taken in January 2009 to compulsorily acquire the 4.4 acres of land forming an integral part of his nine acres.
26. This compulsory acquisition was stated to be for the purpose of "a public school."
27. From the evidence, this school is to be constructed not by the Government of Belize, but by the Mount Carmel Roman Catholic Church on the land compulsorily acquired by the Government of Belize from Mr. Bruce.
28. In effect, the substance of the acquisition is the compulsory taking of property away from **one private** individual and its transfer to another **private** entity, albeit for the purposes of a public school. It is of course, unarguable that the Mount Carmen Roman Catholic Church is a **private** denominational religious body.
29. Mr. Bruce has therefore sought to impugn the second defendant's compulsory acquisition of his land as not being for a public purpose and therefore arbitrary and an abuse of power.
30. A material issue also agitated by Mr. Bruce's claim is whether there was an offer of compensation for his land compulsorily acquired. The evidence from the parties on this is divergent. For the defendants, Mr. Rodriguez in his affidavit states on this aspect as follows:

“Compensation for Property Compulsorily Acquired:

21. *I must also state that at all times the Ministry encouraged the Claimant to make his claim for compensation for the property that had been acquired.*
22. *As early as January 27th the Ministry’s officers, namely the Chief Executive Officer, discussed the issue of the land acquisition with the Claimant to discuss compensation and other related matters. A copy of a letter dated 3rd February written by the Claimant to confirm said meeting is now shown to me and is exhibited hereto and marked **“M.R. 9”**.*
23. *In the Notice of Acquisition dated 11th March, 2009 (M.R. 5) referred to above, the Ministry had requested that the Claimant make his claim for compensation.*
24. *An invitation was again extended to the Claimant on 8th April, 2009 to discuss the acquisition but the Claimant did not appear at the Ministry to enter discussions. A copy of the letter is now shown to me and is exhibited hereto and marked **“M.R. 10”**.*
25. *The request to the Claimant to discuss compensation was also delivered through the Claimant’s Attorney-at-law.*
26. *On 27th May, 2009, 29th June, 2009 and 21st October, 2009 the Claimant’s Attorney-at-Law wrote to the Ministry.*

In the first letter dated 27th May, 2009 the Claimant's Attorney-at-Law wrote to request whether the Ministry would proceed with the acquisition. A copy of the letter dated 27th May, 2009 is now shown to me and is exhibited hereto and marked "M.R. 11". Copies of the letters dated 29th June, 2009 and 21st October, 2009 are now shown to me and are exhibited hereto and marked "M.R. 12" and "M.R. 13", respectively.

27. *The Ministry's response dated June 22nd 2009 acknowledged receipt of the May 27th letter and informed the Claimant's Attorney-at-Law that the Government would not abandon or return the land to the Claimant and in fact invited the Claimant to again present his claim for compensation through the Commissioner of Lands and Surveys. A copy of the Ministry's response letter dated 22nd June, 2009 is now shown to me and is exhibited hereto and marked "M.R. 14".*
28. *In the Ministry's response, which was written by the Chief Executive Officer, the Ministry also informed the Claimant's Attorney-at-Law that the Ministry had previously notified his client to state his claim as to the interests he had in the land and the amounts and full particulars of his claim for compensation in respect of his interests.*
29. *The Chief Executive Officer also informed the Attorney-at-Law that the eight (8) lots referred to as being owned by the*

church would be too small to accommodate a new primary school and that it was the Ministry's understanding that the lots were being returned to their original owners. Thus the 4.4 acres would best suit the purposes of construction of a new school since the church had no other suitable land to build on.

30. *It is therefore the case that the Ministry tried its best to get the cooperation of the Claimant in arriving at a compensation package. The statement by the Claimant in his First Affidavit dated 12th November, 2009 at paragraph 14 that he "continued to hope that reason would prevail and that the Government of Belize would at least enter into negotiations" is patently incorrect.*

31. On the other hand, Mr. Bruce the claimant, deposed in his third affidavit as follows:

"9. *I refer to paragraphs 21 et. al. on the matter of compensation referred to in the Affidavit of the Lands Commissioner and state that at no time did any official of the Ministry of Natural Resources enter into any bona fide negotiations with me for the purchase of my property upon reasonable terms and conditions.*

10. *The first time there was any request made to me to state my claim for compensation was in the letter dated March 15th (Exhibit MR 5) which I received on the 3rd April 2009. It was always my position (and still is) that the purported*

acquisition of my property was not duly carried out for a public purpose.

11. *In any event the valuation of my property purportedly acquired was made known to Government. It showed a value in excess of \$1.2 million and there has been no counter offer or reaction to this by the Government. I am left to believe that the Ministry intends to confiscate my property and transfer title to the Mount Carmel R.C. Church without paying compensation to me.”*
32. From the evidence, it is manifest that there has not been proffered to Mr. Bruce any meaningful offer of compensation for his land.
33. The stance and tenor of the defendants seem to put the onus on Mr. Bruce of stating his terms. This I find is not in keeping with the express provisions of **section 6** of the Act which makes it incumbent on the authorized officer (who may be the Commissioner of Lands in this case or any other person appointed by the second defendant) to enter into negotiations **without delay**, for the purchase of the land to which the declaration of compulsory acquisition relates.
34. Section 6 of the Act provides in terms:

“6.- (1) As soon as any declaration has been published in accordance with section 3, the authorised officer shall, without delay, enter into negotiations or further negotiations for the purchase of the land to which the declaration relates upon reasonable terms

and conditions, and by voluntary agreement with the owner of the land.

(2) It shall not be necessary for the authorised officer to await the publication of the declaration before he endeavours to ascertain from the owner the terms and conditions on which he is willing to sell his land, but no negotiations or agreement shall be deemed to be concluded unless and until the conditions of sale and acquisition have been approved in writing by the Minister. (Emphasis added).

35. The letter exhibited as **M.R. 5** to Mr. Rodriguez's affidavit is dated **11th March 2009**, some two months after the publication on 10th January 2009 in The Gazette of the declaration relating to the compulsory acquisition of Mr. Bruce's land. Mr. Bruce however states that he received it on **3rd April 2009**. Whatever the exact date of its receipt, this letter is not, I find, in keeping with the provisions of section 6. This section is meant to ensure **speedy** resolution of the issue of compensation, by entry into negotiations **without delay**, by the authorized officer for the purchase of the land that is the subject of compulsory acquisition declared pursuant to section 3 of the Act.
36. I find this letter (**M.R. 5**) in the circumstances of this case, misconceived and flawed. This is for the simple reason that it is stated to be a **section 7** notice. This section however, relates to land which has been compulsorily acquired whose boundary have not been set out or identified. The boundaries and identification of Mr. Bruce's land are not in doubt or unidentifiable: they are clearly set out in the schedule to the second defendant's declaration compulsorily acquiring it.

37. I find therefore that it is the provisions of section 6 of the Act that should have been followed. In this case, it is difficult to find that there was compliance with this section. From the evidence, the focus and emphasis of the defendants seemed to have been the compulsory acquisition of Mr. Bruce's land, with the issue of compensation for the land not being seriously engaged or pursued. In fact, up to the conclusion of the trial of this claim, singularly absent has been the issue of compensation for the land or any concrete offer of same by the defendants.
38. From the evidence, even after the publication of the compulsory acquisition of his land, Mr. Bruce was not quiescent. He visited officials of the Ministry of Lands to express his concerns. He wrote the second defendant on 3rd February 2009, pointing out, among other things, that the Church already had eight lots for its school expansion and that the Area Representative had full knowledge of his plans to develop the 4.4 acres of his land and questioned why the Area Representative wanted to give his land to the Church. He expressed his wish for the Government to abandon the acquisition of his land. This letter is exhibited as **MR 9** to Mr. Rodriguez's affidavit.
39. Mr. Bruce states in his third affidavit that he along with a delegation from Benque Viejo del Carmen interested in seeing his Water and Entertainment Park come to fruition visited the Lands Commissioner to secure the abandonment of the compulsory acquisition of his land. As a result of this a meeting was scheduled with the second defendant. He then wrote to the second defendant with a list of key issues he hoped would persuade him to abandon the acquisition of his land. A scheduled meeting with the second defendant on 23rd April 2009, did not materialize as he was told that he had no appointment to see him. (See paras. 6, 7 and 8 of Mr. Bruce's third affidavit).

40. The defendants however, have stood pat on the position that Mr. Bruce's land had been compulsorily acquired as a result of the notices published in the Gazette, and that the Government of Belize held the freehold to Mr. Bruce's property and that he should cease and desist from any further work on the land: see Exhibits **MR 6, 7 and 8** attached to Mr. Rodriguez's affidavit.
41. On 27th May 2009, 29th June 2009 and 21st October 2009, the attorneys for Mr. Bruce wrote to Ministry of Natural Resources querying the compulsory acquisition of his land.
42. On 22nd June 2009, the CEO in the second defendant's Ministry wrote to Mr. Bruce's attorney stating among other things that *"By Gazette notice published on 21st February 2009, the Government of Belize became the legal and beneficial owner of the (4.4 acres of land of Mr. Bruce in Benque Viejo Town) formerly owned by your client, Samuel Brue."*

The letter continues:

"In the spirit of openness Government has acquired this particular land in that area for the construction of a School and this in our belief, comprises a sufficient public purpose. The eight lots you referred to as owned by the Church would be too small to accommodate a new primary school and it is our understanding that these lots would be returned to their original owners. Thus the 4.4 acres would best suit the purposes of construction of a new school because the Church has no other suitable land to build on. It is being done for the good of the community of Benque Viejo and surroundings and the Area Representative of Cayo West Electoral Division has assured us of

43. I now turn to a consideration of the issues agitated by this case against the background of the Constitutional and Statutory Schemes for the Compulsory Acquisition of Property

Mr. Bruce's claim in these proceedings relates to his property in Benque Viejo del Carmen in Cayo District, some 4.4 acres of a nine acre lot he had acquired since 1991. He complains in particular that the way and manner of the compulsory acquisition of these 4.4 acres was not in accordance with the law; and that in particular, the acquisition was not for a public purpose as required by law. He complains as well that the decision to acquire the other half of his property was in the circumstances, unreasonable and capricious.

44. In my view, the constitutional provisions regarding the protection of property and the statutory provisions relating to the compulsory acquisition of land for public purposes are central to a determination of Mr. Bruce's claim.

45. The Belize Constitution, it is manifest, evinces a particular solicitude for the protection of property in several of its provisions.

46. In the Preamble of the Constitution it is expressly stated that “... *the people of Belize require policies of state ... which preserve the right of the individual to the ownership of private property and the right to operate private business.*” It then proceeds to state the dispositive provisions of the Constitution and in particular, under Part II of the Constitution on the **Protection of Fundamental Rights and Freedoms**, it provides in section 3 that “*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 opinions, colour,*

creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, to each and all of the following, namely –

(a) ...

(b) ...

(c) ...

*(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 subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of the said rights and freedoms by any person does not prejudice the rights and freedoms of others or the **public interest.***
(Emphasis added).

47. Section 17(1) of the Constitution in particular, fleshes out in more detail the Constitution’s proscription against arbitrary deprivation of property. It provides in terms as follows:

“17(1) No property of any description shall be compulsorily taken possession of and no interest in or right over property of any description shall be compulsorily 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 of access to the courts for the purpose of –*
 - (i) *establishing his interest or right (if any);*
 - (ii) ***determining whether that taking of possession or acquisition was duly 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.”*

48. It is therefore clear that the Constitution’s solicitude for private property is not unlimited or unqualified: in particular, it enables property to be compulsorily acquired if it is for a **public purpose**. **But such compulsory acquisition must be done under a law which meets the provisions of subsection (1) of section 17.** This case is about the compulsory of Mr. Bruce’s land.

49. In the case of the compulsory acquisition of land for public purpose or for a purpose likely to prove useful to the public or to a substantial class or

section of the public, there are extant in Belize, two statutory schemes namely, the **Land Acquisition (Public Purposes) Act** – Chapter 184 of the Laws of Belize, Revised Edition 2000, which I have referred to in this judgment as the “Act”. And the **Land Acquisition (Promoters) Act** – Chapter 183 of the Laws of Belize, Revised Edition 2000.

The former is prior in time having been operational since 1st April 1947; the latter Act came into force on 27th November 1948.

50. Both Acts, of course, predate Belize’s attainment of independence on 21st September 1981, with a written Constitution declared to be the supreme law and any law inconsistent with it to be void to the extent of the inconsistency. The Constitution importantly, contains in its Part II extensive provisions for the Protection of Fundamental Rights and Freedoms. I have briefly recounted these at paras. 43 to 48 of this judgment the Constitutional provisions relating to the protection of private property.
51. Indeed, in a seminal decision of the Court of Appeal in **San Jose Farmers’ Cooperative Society Ltd. v The Attorney General (1992) 43 WIR 63** strictures made of certain sections of the Land Acquisition (Public Purposes) Act, as it then stood, were taken on board by the Legislature resulting in amendments in 1992, to the Act: see Act No. 16 of 1992. In particular, the original section 3 of the Act which had provided that the minister’s declaration that any land should be acquired for a public purpose was **conclusive** evidence of that fact, was amended to be **prima facie** evidence. That is to say, henceforth any such declaration would only be a presumption and therefore like any presumption it is rebuttable. This fact was buttressed by the addition of a new sub-section (5) to section 3 of the Act which now reads::

“(5) *Any person claiming an interest in or right over the land shall have a right of access to the courts for the purpose of determining whether the acquisition was dully carried out for a public purpose in accordance with the Act.*” (Emphasis added).

52. Act No. 16 of 1992 in the amendments it effected to the Land Acquisition (Public Purposes) Act, brought it in alignment with section 17 of the Constitution.
53. In so far as the statutory provisions and schemes for the compulsory acquisition of land are concerned, I shall only quote the relevant provisions, I think, that are germane to this case.
54. First, the **Land Acquisition (Public Purposes) Act** provides in section 3 as follows:

“3.- (1) *Whenever the minister considers that any land should be acquired for a public purpose, he may cause a declaration to that effect to be made in the manner provided by this section and that declaration shall be prima facie evidence that the land to which it relates is required for a public purpose.*

(2) *Every declaration shall be published in two ordinary issues of the Gazette, there being an interval of not less than six weeks between each publication, and copies thereof shall be posted on one of the buildings, if any, on the land or exhibited at suitable places in the locality in which the land is situate.*

(3) *The declaration shall specify the following particulars to the land which is to be acquired –*

- (a) *the district in which the land is situate;*
- (b) *a description of the land, giving the approximate area and such other particulars as are necessary to identify the land;*
- (c) *in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;*
- (d) *the public purpose for which the land is required.*

(4) *Upon the second publication of the declaration in the Gazette as required by subsection (2), the land shall vest absolutely in the Crown and the authorised officer, and his agents, assistants and workmen may enter and take possession of the land accordingly.*

(5) *Any person claiming an interest in or right over the land shall 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 this Act.*

(6) *Nothing in this section shall be construed to prevent the acquisition of lands for public purposes by private treaty.*

And section 6 which I have already reproduced at para. 34 of this judgment on the duty of the authorized officer to treat **without delay**, with the owner of the land compulsorily acquired for its purchase.

55. Secondly, the **Land Acquisition (Promoters) Act**. This Act defines a “promoter” to mean any corporation, company or person desirous of acquiring land under its provisions. It provides in so far as is relevant in section 3 as follows:

“3.- (1) *Subject to the provisions of this Act, a promoter may acquire land compulsorily.*

(2) *Any promoter may make application in writing to the Minister responsible for lands for the compulsory acquisition of land in Belize and the Minister responsible for lands may require such promoter to deposit in the Treasury such sum as the Minister considers sufficient to defray the cost of the inquiry required to make under subsection (4) of this section.*

(3) *Every such application shall state the full particulars of the land which the promoter desires to acquire, the purpose for which it is required and such other particulars as the Minister responsible may require.*

(4) *The Minister responsible for lands shall, upon the deposit being made, appoint a fit and proper person to hold an inquiry into the purpose for which the land is required by the promoter and whether that purpose is likely to prove useful to the public or to a substantial class or section of the public.*

(5) ...

(6) ...

(7) *A record of every such inquiry shall be laid on the table of the National Assembly and, thereupon, it shall be lawful for the National Assembly by resolution to approve or decline to approve the compulsory acquisition of the whole or any part of the land described in the application.*

Provided that the National Assembly shall not approve the acquisition of the whole or any part of the land 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.

(8) *Upon the compulsory acquisition of any land being approved by the National Assembly, it shall be lawful for the Minister by notification published in the Gazette to declare the land to have been acquired by the promoter for the purposes stated in the*

application and, thereupon, the land shall vest absolutely in the promoter free from all encumbrances.

Provided that the minister shall not publish such notification unless and until the promoter has –

(a) given such security as the Minister may require for the due payment of the costs of the acquisition and all compensation relating thereto; and

(b) entered into such agreement as the minister may require as to all or any of the following matters, namely -

(i) the terms on which the land is to be held by the promoter;

(ii) the time within which and the conditions on which the work is to be executed and maintained; and

(iii) the terms on which the public will be entitled to the use of benefit of the work.

(9) A memorandum in writing of the terms of any agreement entered into in pursuance of paragraph (b) of section (8) shall be published in the gazette and the terms published shall be binding on the promoter.

(10) If the promoter makes default in complying with the terms of any such agreement as published in the Gazette, the land shall be forfeited to the Crown:

Provided that any land so forfeited to the Crown shall not vest in the Crown unless and until a judgment declaring the forfeiture is obtained and, on such judgment being obtained, the title of the Crown to the land shall relate back to and commence at the time when the forfeiture took place.”

56. Mr. Said Musa SC for Mr. Bruce has, in his written and oral arguments, urged and submitted that the second defendant has insisted that acquisition of Mr. Bruce’s land was for “a public school”, but it is manifest, from the evidence, that the real purpose was to make the land available to the Roman Catholic Church in Benque Viejo del Carmen for the expansion of its Mount Carmel School, Mr. Musa SC submitted rightly, in my view, that the Roman Catholic Church is a **private** entity established by statute as a corporation since 1902. He further submitted that while it is undeniable that under the Church/State partnership in education, the Roman Catholic Church has played a significant role in the field of education and that most of its schools are grant-aided (see in particular, the affidavit of Mr. Luis Carballo), this does not, however, he submitted, alter the undeniable fact that in so far as land ownership is concerned, the Roman Catholic Church is a **private** entity.

57. Mr. Musa SC, accordingly, submitted that the law makes a clear distinction between the acquisition of land for a **public purpose** under Chapter 184 and an **acquisition of land to facilitate or promote a private entity to acquire land where this “is likely to prove useful to the public or to a substantial class or section of the public.”**

58. The force of this argument is certainly not without merit in the light of my findings in paras. 25 to 28 above.
59. I am satisfied that, if the second defendant or the Area Representative himself were desirous of aiding or facilitating the Mount Carmen Catholic Church to acquire land for its school, in the circumstances of this case, the correct and proper statutory scheme to have recourse to would be the **Land Acquisition (Promoters) Act**. Through this medium, even Mr. Bruce's land could be acquired compulsorily. But the process would be more transparent and objective: Any person whose land is affected through this scheme, will have the opportunity to state his case, pursuant to subsection (4) of section 3 of this Act at the **inquiry into the purpose for which the land is required by the promoter and whether that purpose is likely to prove useful to the public or a substantial class or section of the public**. Any claim or grievance by the land owner would, as the inquiry would be by an inferior tribunal, be of course subject to the supervisory jurisdiction of the Supreme Court. And importantly, the record of such inquiry shall, pursuant to sub-section (7) of section 3, be laid before the National Assembly, which by a resolution, may approve or decline to approve the compulsory acquisition of the whole or any part of the land described in the promoter's application.
60. Ms. Priscilla Banner, the deputy Solicitor General, however, argued with vigour for the defendants that the compulsory acquisition of Mr. Bruce's land was for a public purpose, namely, the construction of a public school, and that the applicable provisions of the Land Acquisition (Public Purposes) Act were followed in this case. She laid much stress on "public purpose" as the reason for the compulsory acquisition of the claimant's land.

61. The thrust of the learned deputy Solicitor General's arguments and submissions is that once the second defendant had made a declaration under section 3(1) of the Land Acquisition (Public Purposes) Act that the claimant's land should be acquired for a "public purpose" that was sufficient and lawful, given the definition of the term "public purpose" in section 4 of the Act.
62. I have reproduced the provisions of section 3 of the Act earlier in this judgment at para. 54.
63. The term "**public purpose**" itself is, in my view, given a somewhat Delphic definition in section 2 of the Act to mean "*a purpose determined to be a public purpose in accordance with section 4*" of the Act.
64. **Section 4** of the Act so far as is relevant provides:

"4. Whenever it appears to the Minister that any land is likely to be required for any purpose which, in the opinion of the Minister, is a public purpose and it is necessary to make a preliminary survey or other investigation of the land, he may cause a notification to that effect to be published in the Gazette and thereupon the authorised officer and his agents, assistants and workmen, may do all or any of the following things – "

65. It would seem that under section 4 much or everything depends upon the Minister as to whether any land likely to be required for any purpose which, in his opinion is a public purpose and that it is necessary to make preliminary survey or other investigation of the land. This is undoubtedly a circuitous meaning or at least, with respect, an oxymoronic definition of "public purpose". But the true purpose, and I dare say, meaning of this

section is to enable the Minister, if in his opinion any land is likely to be required for a public purpose **and** it is necessary to make a preliminary survey or other investigation of the land, to cause a notification to that effect to be published in the Gazette. Whatever else section 4 may mean, it **does not**, in my respectful view, **authorize** the compulsory acquisition for a “public purpose” of any land. All it authorizes, and this, by dint of the publication of the notification in the Gazette is, a licence to the authorized officer and his agents, assistants and workmen to do all or any of the things specified in its paragraphs (a) to (g), subject to the proviso thereof in relation to the land stated in the Gazette publication.

66. The power of compulsory acquisition of land for public purpose is, however, provided for in **section 3** of the Act **and not** section 4. The latter, I find, is only a prelude to the exercise of the powers granted under the former. This is made clear by sub-paragraph (ii) to proviso (b) of section 4 regarding payment of compensation for disturbance of the land by the entry thereon of the authorised officer or his agents or assistants and workmen when it provides

*“(ii) in so far as it relates to land the compulsory acquisition which is **subsequently** completed under section 3, as though it were part of the compensation for the acquisition of the land.”*

67. It is manifest that the heart of the defendants’ case is that Mr. Bruce’s land was compulsorily acquired for a **public purpose** and that the provisions of the **Land Acquisition (Public Purposes) Act** were complied with in this case.
68. Undoubtedly, **section 3** of the Act vouchsafes to the Minister (the second defendant in this case) a rather wide discretion to make a declaration that any land to which the declaration relates should be acquired for a public

purpose. It is, in my view, of cardinal importance to note that the Minister's declaration as to the public purpose for which the land should be acquired is only *prima facie* evidence. It is not **conclusive**. The latter was the case up until 1991 and, as I have noted at para. 51, after the Court of Appeal's decision in the **San Jose Farmers** case *supra*, in 1992, the Legislature effected certain amendments to the law and stipulated that the Minister's declaration as to "the public purpose" for which any land is to be compulsorily acquired shall now be *prima facie evidence*.

69. And more significantly, in conformity with section 17(1)(b)(ii) of the Constitution, the Legislature added what is now sub-section (5) of the Act which provides:

"(5) Any person claiming an interest in or right over the land shall 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 this Act."

70. This is the ground on which I dare say, Mr. Bruce has pitched his tent in this case: Was the compulsory acquisition of his land carried out for a public purpose in accordance with the law?
71. I am satisfied that notwithstanding the rather opaque definition of "public purpose" given in the Act, as I have noted above, **the issue of whether the compulsory acquisition of any land is for a public purpose is now squarely within the remit of the court's determination**. This is notwithstanding the Delphic definition of "public purpose" in the Act.
72. Can the Minister get up one fine Monday morning and cause a declaration to be published to say that an individual's land ought to be compulsorily

acquired for a public purpose? Quite what informs the Minister's consideration that any land should be acquired for a public purpose is nowhere stated or shown. In this particular case, quite how the Minister (the second defendant) came to consider the compulsory acquisition of Mr. Bruce's land is not stated. In fact there is nothing from the second defendant himself nor from the CEO in his Ministry. To be sure, there is in **Exhibit MR 14** (letter dated June 22nd 2009 from the CEO to Mr. Bruce's attorneys) some advertence to what might pass as the rationale for the compulsory acquisition of Mr. Bruce's land in the closing paragraphs of that letter:.

“In the spirit of openness Government has acquired this particular land in that area for the construction of a School and this, in our belief, comprises a sufficient public purpose. The eight lots you referred to as owned by the Church would be too small to accommodate a new primary school and it is our understanding that those lots would be returned to their original owners. Thus the 4.4 acres would best suit the purposes of construction of a new school because the Church has no other suitable land to build on. It is being done for the good of the community of Benque Viejo and surroundings and the Area Representative of Cayo West Electoral Division has assured us of this.

In light of the above Government of Belize will not abandon nor return the land to your client and hereby take this opportunity to invite your client to present his claim for compensation to us through the Commissioner of Lands and Survey.”,

73. It may be noted that this letter of rationale, if that it is, is dated 22nd June 2009, some months **after** the publication of the declaration compulsorily acquiring Mr. Bruce's land.
74. It is, in my view, elementary fairness and justice that a person whose land is about to be compulsorily acquired should know beforehand and be afforded an opportunity, if he wants, to make representation to dissuade the decision-maker. I have stated at para. 5 of this judgment that the Minister did not state or disclose what "all the facts of the case" for compulsorily acquiring the land apart from stating the public purpose for the acquisition, when he certified on 6th January 2009, that Mr. Bruce's land ought to be acquired (see **MR 1**). On 6th January 2009, Mr. Bruce was not officially aware of the impending fate of nearly one-half of his land; nor had he been consulted in respect of it, nor could he have made any representation. In fact, by that date, Mr. Bruce had plans for the development of that portion of his land which was declared to be compulsorily acquired: the development of a Water and Entertainment Park which he believed would be of benefit to the community. There is also no evidence of what, if any, representation the Mount Carmel Roman Catholic Church itself had made to the second defendant regarding Mr. Bruce's land. The only reference is in the advertence in **MR 14** that the Area Representative of Cayo West Electoral Division had assured the second defendant's ministry that the compulsory acquisition was "*being done for the good of the community of Benque Viejo and surroundings.*"

Public Purpose and the Compulsory Acquisition of Land

75. The deputy Solicitor General argued valiantly that in the instant case, the second defendant certified and caused a declaration to be published in the Gazette pursuant to section 3 of the Land Acquisition (Public Purposes) Act that Mr. Bruce's land was being acquired for a "public purpose, viz,

Public School” and that therefore its compulsory acquisition is valid and lawful. She submitted that the very broad definition/meaning given to “public purpose” in the Land Acquisition (Public Purposes) Act is to a large extent reflected in decisions of the courts relating to the meaning of “public purpose”. She relied on, among others, the Privy Council decision in **Williams v The Government of the Island of St. Lucia (1969) 14 WIR 176**; **Baldwin Spencer v The Attorney General of Antigua and Barbuda** (The Asian Village case) a case decided by the Court of Appeal of the OECS, Civ. App. No. 20A of 1997; and **Coconut Beach Residence Ltd and Another v Minister of Agriculture of Dominica et al** decided by the High Court of The Commonwealth of Dominica on 31st July 2001 – Civil Suit No. DOM HC V0236 of 2001.

In all of these cases challenges to compulsory acquisition of land for public purpose under the respective Land Acquisition Acts in question failed.

76. In the **Asian Village** case, the issue of “public purpose” arose in the context of an agreement between the Government of Antigua and Barbuda and Asian Village Ltd. for the development of an area on the west coast of Antigua by which the Government was to acquire Guiana island and other lands and transfer them to Asian Village for \$15.5 million. Asian Village would construct a massive project which would include resort accommodation, casino, golf course, retail shops, residential developments, commercial and hotel related projects and facilities. There was political controversy over the agreement. The Antiguan House of Representatives however, approved the agreement and authorized the acquisition of the lands for *the public purpose of “the promotion and development of tourism and supporting tourist related activities.”* Declarations acquiring the lands identified in the agreement were published in the Gazette in

accordance with the provisions of section 3 of the Antiguan Land Acquisition Act.

77. I should point out here that the provision of section 3 of the Antiguan Act was the same as the **pre-1992 section 3** of Belize's Land Acquisition (Public purposes) Act. This made the declaration of compulsory acquisition of the land in question, for public purpose, **conclusive** evidence that it was so acquired. This, as I have pointed out in this judgment, is no longer the case in Belize since 1992.
78. The learned acting Chief Justice of the OECS as he then was, Dennis Byron, adverted among other things in that case, to the fact that the effect of section 3(1) of the Antiguan Land Acquisition Act would make the question as to whether an acquisition was made for a public purpose non-justiciable.
79. This, of course, is not constitutionally and legally the case in Belize today.
80. Ms. Banner laid much stress on this case for the judicial determination of what is "public purposes" in the context of the compulsory acquisition of property. She relied in particular on the following extracts from Chief Justice Byron's judgment in that case, after reviewing the provisions of the Antiguan Constitution and its Land Acquisition Act, the learned Chief Justice continued:

"The meaning and effect of these constitutional and statutory provisions is already well settled by highest judicial authority, and cannot be considered a difficult question.

The appellant invested great effort in submitting that section 9 of the Constitution of Antigua was contravened by the fact that the Government intended to acquire property for the purpose of transferring it to a private developer who would use it for his own profit and that could not be a “public purpose” and was an unconstitutional use of the taxpayer’s money.

The root decision of public purpose can be found in the Privy Council decision of Hamabai Framjee Petit v Secretary of State for India (1914) L.R. Vol. XLII Indian Appeals 44 where Lord Dunedin said at p. 47:

‘The argument of the appellants is really rested upon the view that there cannot be a ‘public purpose’ in taking land if that land when taken is not in some way or other made available to the public at large. Their Lordships do not agree with this view. They think the true view is well expressed by Batchelor J in the first case, when he says: “General definitions are I think, rather to be avoided where the avoidance is possible, and I make no attempt to define precisely the extent of the phrase ‘public purposes’ in the least; it is enough to say that, in my opinion, the phrase, 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.

[After reviewing decisions from the United States and Australia], the Chief Justice continued:

*The other criticism that attaining the proposed tourist development through a private entrepreneur whose motive is personal profit and gain cannot be a public purpose, is not only logically untenable but has also been judicially rejected. A public purpose may be achieved through private enterprise at the instance of a private entrepreneur whose sole aim may be to make profit. That matter was well expressed in the Indian case of **Narayan Singh v Bihar (1978)** A.I.R. 136 at p. 138 by S.K. Jha J:*

Para 6 ... The objective test applied from case to case, 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 purpose. Public purpose may be achieved through private enterprise as well as through any public agency. There is no provision in the Act precluding the acquisition at the instance of a private agency so long as the purpose for acquisition is a public purpose. 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. It is well settled that even though the acquisition of land is for a private concern whose sole aim may be to make profit, if the intended acquisition of land could materially help the national economy or the promotion of public health or the furtherance of general welfare of the community or something of the like, the acquisition will be deemed to be for a public purpose.”

81. I would of course, all things being equal, give deference and weight to these wise judicial words on what is “public purpose”, but I think I would rather adopt the counsel of Batchelor J cited by Lord Dunedin to the effect that *“General definitions are I think, rather to be avoided when avoidance is possible and I make no attempt to define precisely the extent of the phrase “public purpose” in the least.”*
82. I will therefore assay no definition of “public purpose” for the purposes of this case. I will content myself with saying that by the provisions of section 3 of the Act, the declaration of compulsory acquisition of any land for a **public purpose** is for the Minister to make; it is clear that this declaration is stated to be only *prima facie evidence*. But in Belize, whether in fact and law, unlike the cases relied upon by the learned deputy Solicitor General, a determination of whether the compulsory acquisition is for **public purpose**, is vouchsafed to the courts, both by section 17(1)(b)(ii) of the Constitution and sub-section (5) of the Act.
83. It is of course, not the place or role of the courts to **decide** what is a **public purpose**. The courts are not suited or equipped for that task. This is a task that falls to policy and decision makers and it is best left with them.
84. But to the courts however, is vouchsafed the duty, both by section 17(1)(b)(ii) of the Constitution and sub-section (5) of section 3 of the Act, of **determining** whether the compulsory acquisition of land, as in the instant case, was duly carried out for a **public purpose** in accordance with Act.
85. In carrying out this task, not always an easy one, in my view, the court must always be mindful that whenever the minister makes a declaration under section 3 of the Act that any land should be acquired for a public

purpose, he is, after all, exercising a **statutory power** granted by the Legislature. Therefore, to validate an exercise of this power, given in this instance, in a wide discretionary format: *“the Minister may cause a declaration to the effect that land should be acquired for a public purpose”*, the exercise must be informed by **reasonableness**, **fairness** and should **not be arbitrary**. As Lord McNaughton memorably stated the principle:

“It is well settled that a public body (which no doubt includes a minister of government) invested with a statutory powers ... must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.”

in **Westminster Corporation v L & NW Railway (1905) A.C. 426**, at p. 430.

See also **Williams v Giddy (1911) AC 381** where again, Lord McNaughton again reiterated the principle in the Privy Council in a case from New South Wales in Australia where the Public Service Board had awarded a retiring civil servant a derisory gratuity of a penny per year of service:

“Nobody, of course, can dispute that the Government or the Board had discretion in the matter. But it was not an arbitrary discretion ... It was a discretion to be exercised reasonably, fairly, and justly.”

See also **Roberts v Hopwood** (1925) A.C. 378 and generally **Administrative Law**, Ninth Ed. by H.W.R. Wade and C F Forsyth (2004) Chp. 11.

86. The principle of **reasonableness** as the litmus test to validate administrative acts and decisions is today encapsulated in the dictum of Lord Greene MR in **Associated Provincial Picture House Ltd v Wednesbury Corpn.**(1948) 1 K.B. 223 at 229:

“A person entrusted with a discretion must, so to speak, direct himself properly in law. He must call his own attention to the matter which he is bound to consider. He must exclude from his consideration matters which are irrelevant to what he has to consider ... it is taking into consideration extraneous matters. It is so unreasonable that it might almost be described as being done in bad faith ...” – **The Wednesbury** unreasonableness.

87. I have in this judgment stated the constitutional protection surrounding property. This consideration of reasonableness should be all the more paramount when the property is land, as in the instant case. This, of course, is not in anyway to diminish the constitutional protection against arbitrary deprivation of other types of property generally.

I adopt in this regard, with respect, in relation to the exercise of the powers of compulsory purchase of land, the words of Slade LJ in **R v Secretary of State for Transport and others, ex parte de Rothschild** (1989) 1 All ER 933 at p. 934:

*“... it has to be recognized that the compulsory purchase of land involves a serious invasion of the private proprietary rights of citizens. As Purchas LJ described them in *Chilton v Telford Development Corp.* (1987) 3 All ER 992 at 997 [1987] 1 WLR 872 at 878, the powers of compulsory purchase of an acquiring authority are of a draconian nature. The power to dispossess a citizen of his land against his will is clearly not to be exercised lightly and without good and sufficient cause.”*

In this connection, Slade LJ quoted Lord Denning MR in **Prest v Secretary of State for Wales** (1982) 81 LGR 193 at p. 198 and Watkins LJ in the same case at p. 211 to this effect:

“The taking of a person’s land against his will is a serious invasion of his proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinized. The courts must be vigilant to see to it that that authority is not abused. It must not be used unless it is clear that the Secretary of State has allowed those rights to be violated by a decision based upon the right legal principles, adequate evidence and proper consideration of the factor which sways his mind into confirmation of the order sought.”

88. Mr. Musa SC for the claimant has urged and submitted as well that in the instant case, that the compulsory acquisition of Mr. Bruce's land was not duly carried out for a public purpose in accordance with the law authorizing the taking of possession or acquisition of property as stipulated in section 17(1)(b)(ii) of the Constitution. I must ineluctably agree with him from the facts and circumstances of this case. In particular the statutory provisions for the compulsory acquisition of the land in question here, I find, were not observed or followed. There is no evidence that the provisions of subsection (2) of section 3 were complied with here. This relates to the publication of the declaration of compulsory acquisition (made under subsection (1)). In addition to publication in two ordinary issues of the Gazette, the subsection requires that copies of the declaration shall be posted on one of the buildings, if any, on the land **or exhibited at suitable places in the locality in which the land is situate.**

Doubtless, the practical purpose and effect of this requirement is to bring home to the land owner whose land is being acquired and the local community for whose benefit that land is being acquired what is being done. Mr. Bruce had no benefit of this local posting of copies of the declaration. There is no evidence that copies of the declaration of the compulsory acquisition of his land were ever posted in Benque Viejo Town. But it is said, the Area Representative had assured the second defendant's Ministry that the school was for the benefit of the community in Benque. This was not sufficient to comply with the statutory requirement of local positing of copies of the compulsory acquisition declaration.

Determination

89. I now turn to a determination of this case in the light of the law, the facts and the evidence I have found in this judgment.

90. *Ex facie*, the compulsory acquisition of Mr. Bruce's land is stated to be for a "public purpose"; no doubt the building of any school other than a **purely private** one, even then providing education **is** a public purpose. But in my respectful view, the concatenation of circumstances attendant on the compulsory acquisition of Mr. Bruce's land in this case suggests otherwise. I find the following considerations compel me to this conclusion:

- i) The undisputed and unchallenged statement that the Area Representative who also happens to be the Minister of Economic Development, had stated publicly that Mr. Bruce's land would be taken away from him and handed over to the Mount Carmel Catholic Church to build a school;
- ii) the fact that the Church's lease on lands that it could have built its school on was allowed conveniently to lapse or be renounced, on the eve of the compulsory acquisition of Mr. Bruce's land. Surely the lease could have been extended – there was an alternative location for the school other than Mr. Bruce's land; consequently
- iii) the alienation of land from one private individual to a **private entity**, albeit the church, which had alternative site, would offend basic notions of fairness and reasonableness;
- iv) the Church could have been facilitated through the Land Acquisition (Promoters) Act to acquire, if necessary, Mr. Bruce's land: this would have been more equitable and transparent;

- v) no meaningful or realistic engagement by the authorized officer to settle compensation for compulsorily acquiring Mr. Bruce's land;
- vi) the claimed cost by Mr. Bruce of his land, some \$1.2 million, would be unreasonable in the circumstances, for the defendants to insist on acquiring it: surely the defendants cannot be oblivious of cost even, if eventually it is to be assessed by a Board;
- vii) the acquisition itself, as I have found in this judgment, was not carried out in accordance with the law authorizing compulsory acquisition of land;
- viii) the letter signed by the second defendant to his CEO certifying that he had considered "all the facts of the case, particularly the purpose for which the land described in the schedule hereto ... is for a public purpose ..." is dated on **6th January 2009**. Yet the Declaration published in the Gazette under section 3 of the Act signed by the CEO and the Declaration under section 4 of the Act, were both signed on **5th January 2009**. The feeling is inescapable that the letter or certificate of 6th January 2009, was in the circumstances an after-thought, evincing that an **a priori** determination had been made to compulsorily acquire the claimant's land in any case. (See Exhibits **MR 1, 2, 3 and 4**). This I find is egregious;
- ix) but even more egregious I find is that in a letter dated 4th November 2009, the Commissioner of Lands authorized the Roman Catholic Diocese of Belize in Benque Viejo Town to

enter the claimant's land. From the tenor and content of this letter, it is supposedly issued under section 4 of the Act. But as I have found in this judgment, this section only authorizes the authorized officer, who could of course be the Commissioner of Lands himself, and his agents, assistants and workmen to enter land being compulsorily acquired. The Roman Catholic Church Diocese in Benque Viejo can hardly fall into this category. Mr. Bruce has not unnaturally complained about this in para. 5 of his second affidavit.

Conclusion

91. It is for all these reasons that, perforce, I must accede to the claimant's application and grant the **declaration** he seeks though not in the precise terms he has urged on the Court.

Accordingly, I do hereby **declare** that the second defendant's decision to compulsorily acquire the claimant's land, 4.4 acres, as set out in the Schedule to the purported Declaration compulsorily acquiring the claimant's land, is an error of law, unreasonable and arbitrary.

I grant as well an order of certiorari to quash the said decision.

Finally, I award the costs of these proceedings to the claimant in the sum of \$30,000.00.

A. O. CONTEH
Chief Justice

DATED: 11th May 2010.