IN THE COURT OF APPEAL OF BELIZE, A.D. 2011

CIVIL APPEAL NO. 32 OF 2010

BETWEEN:

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

AND

SAMUEL BRUCE **Respondent**

—

BEFORE:

The Hon Mr Justice Morrison	**-**	**Justice of Appeal**
The Hon Mr Justice Mendes	**-**	**Justice of Appeal**
The Hon Mr Justice Pollard	**-**	**Justice of Appeal**

Nigel Hawke and Miss Magalie Perdomo for the appellants.
Said Musa SC and Kareem Musa for respondent.

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26 October 2011, 30 March 2012.

MORRISON JA

Introduction

[1] At the conclusion of the hearing of this appeal on 26 October 2011, the Court announced that the appeal would be dismissed, with costs to the respondent, to be taxed or agreed. This is my contribution to the promised reasons for this decision.

[2] For the purposes of this judgment, I will refer to the appellants collectively as 'the Minister', and to the respondent as 'Mr Bruce'. The Minister was at all material times the responsible minister for the purposes of the Land Acquisition (Public Purposes) Act, ('the Act') and Mr Bruce was the owner of land situate in Benque Viejo del Carmen in the Cayo District.

[3] This is an appeal from a judgment of Conteh CJ, given on 11 May 2010 on an application for judicial review of the Minister's decision to compulsorily acquire some 4.4 acres of Mr Bruce's land. Conteh CJ found that the Minister's decision was "an error of law, unreasonable and arbitrary" and it was accordingly quashed. Costs of $30,000.00 were awarded to Mr Bruce.

[4] The grounds upon which Conteh CJ granted this declaration were that (i) "the compulsory acquisition of Mr Bruce's land was not duly carried out for a public service 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"; and (ii) "the statutory provisions for the compulsory acquisition of the land in question … were not observed or followed" (para. 88 of the judgment).

[5] The issue on this appeal, in which the Minister challenges this decision, is whether Conteh CJ was correct in concluding as he did on the basis of the evidence before him.

The facts

[6] The factual background to the matter is largely undisputed. In 1991, Mr Bruce purchased nine acres of land on the Arenal Road, Benque Viejo del Carmen. Since that time, he has occupied what he described as the "front portion" of this property as his family residence. He has also managed an institute known as the 'B.J. Institute' and carries out various community activities on the property.

[7] In 2007, Mr Bruce commenced construction of a 'stone–built' hotel on the south western corner of the property, with a view to servicing "the hydro-road tourism potential" of the area. The construction plans also called for the building of a 'Water

and Entertainment Park' on what was described as the back portion of the property, an area comprising some 4.4 acres ('the 4.4 acre plot').

[8] By July 2008, the hotel was in an advanced stage of construction. On 9 and 23 July 2008, Mr Bruce wrote letters to the then Area Representative and Minister of National Development, the Honourable Erwin Contreras. Mr Bruce's purpose in writing was to advise Minister Contreras of his development plans for the 4.4 acre plot and to seek his approval for the project.

[9] Both letters went unanswered, but on 21 September 2008, during Independence Day festivities at the ball-field pavilion in Benque Viejo del Carmen, Mr Bruce encountered Minister Contreras and took the opportunity to discuss his development plans with him. According to Mr Bruce's unchallenged evidence, "Minister Contreras expressed his approval and verbal support for my project". Thus encouraged, Mr Bruce said, "I entered into various contractual arrangements with contractors…to develop the Water and Entertainment Park".

[10] On 12 January 2009, Mr Bruce saw and heard Minister Contreras making a public announcement on Benque Viejo cable television of the proposed acquisition by the Government of Belize ('GOB') of a portion of his property for the purposes of an infant school for the Mount Carmen Roman Catholic parish ('the church'). It then turned out that two days earlier, on 10 January 2009, the Minister had caused to be published in the Belize Gazette notice of a declaration under section 3 of the Act compulsorily acquiring the 4.4 acre plot, "for a public purpose, viz: PUBLIC SCHOOL". A second publication of this declaration appeared in the Belize Gazette of 21 February 2009.

[11] By a letter dated 11 March 2009, which, Mr Bruce insists, he did not receive until 3 April 2009, he was advised by the Commissioner of Lands and Surveys in the Ministry of Natural Resources ('the Commissioner'), that the 4.4 acre plot "has been acquired for a public purpose effective from the 21st day of February 2009". This letter ended with a request to Mr Bruce to "respond stating your claim for compensation so that a mutually agreed price may be determined without undue delay".

[12] There followed a number of appeals by Mr Bruce to the Government of Belize ('GOB') not to proceed with the compulsory acquisition, so as to allow him to continue with his development project, which, he insisted, "would create hundreds of jobs and provide a much needed source of income to the people of this depressed area of our country". In pursuance of these appeals, Mr Bruce, accompanied by a delegation from Benque Viejo del Carmen, visited the Commissioner at his office in Belmopan. As a result of the Commissioner's intervention, a meeting was arranged with the Minister for 22 April 2009, but this meeting did not in the end take place, as when Mr Bruce and two associates arrived at the appointed time and place for the meeting on that date, they were denied access and told that they did not have an appointment with the Minister.

[13] Mr Bruce pursued his protest against the compulsory acquisition of the 4.4 acre plot through correspondence written by him and by his attorneys-at-law, Messrs Musa & Balderamos. Among his many complaints were that the 4.4 acre plot was far larger in size than would be needed to service an infant school.

[14] Further, that eight adjoining lots of land in close proximity to the 4.4 acre plot had already been made available by way of a lease from GOB to the church, for the purpose of building an infant school, from as long ago as 2002. However, to date, no construction had been carried out on any of these lots. It was subsequently confirmed that on 12 September 2002 the church was given a Lease Approval for a period of seven years on those eight lots and that the church had expressly renounced all its right to those lots by letter to the Minister dated 7 December 2009. By a notification bearing the same date, the Commissioner also advised the church that the lease had been terminated as a result of its expiry on 2 December 2009 and requested that the land "be vacated at once".

[15] GOB's position on the question of compensation for the compulsory acquisition of the 4.4 acre, was that it had invited Mr Bruce from the outset of the acquisition process to make a claim for compensation, but that he had failed to do so. Mr Bruce's response to this was to observe that, despite his having, through his attorneys-at-law, submitted evidence to GOB that the 4.4 acre plot had been valued at $1.2 million, there had been "no counter offer or reaction to this by [GOB]".

[16] But in any event, Mr Bruce questioned GOB's rationale for seeking to acquire "a valuable commercial property", when the church had already been provided with a suitable parcel of land for the building of an infant school. (On this last point, GOB asserted that the parcel of eight lots "would be too small to accommodate a new primary school…[and that]…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".)

[17] An unexplained oddity which emerged from the evidence of the acquisition process was that the Minister's advice to the Chief Executive Officer in his Ministry that, "Having considered all the facts", the 4.4 acre plot should be acquired for a public purpose within the meaning of the Act, bears the date 6 January 2009, while the first official notification of the acquisition in the Belize Gazette of 10 January 2009, is dated a day earlier, that is, 5 January 2009.

[18] On 9 November 2009, without notice, workers authorised by the Commissioner entered onto the 4.4 acre plot, "cutting down trees and forcibly taking possession and control thereof". The leader of the group of workers presented Mr Bruce with a permission to survey dated 4 November 2009, which had been granted to the Roman Catholic Diocese of Belize.

The judicial review

[19] Not satisfied by GOB's response to his complaints and protests about the acquisition, Mr Bruce sought judicial review of the Minister's decision to acquire compulsorily the 4.4 acre plot. The grounds of his application were as follows:

> (i) The purported compulsory acquisition of the Applicant's property was not duly carried out for a public purpose in accordance with the law.
>
> (ii) The said compulsory acquisition was an arbitrary deprivation of Applicant's property.

(iii) The Second Respondent's decision to compulsorily acquire the Applicant's property, ostensibly for the purpose of siting a school for the Roman Catholic Diocese, when a suitable parcel of land comprising 8 adjoining lots had already been secured in another location for the same purpose, was unreasonable, an abuse of power and irrational by virtue of which the Applicant has suffered real prejudice with substantial adverse consequences for the Applicant."

[20] Mr Bruce himself swore to a total of four affidavits (dated 12 November 2009, 27 November 2009, 26 January 2010 and 22 February 2010 respectively) in support of the application, while GOB's position was set out in an affidavit sworn to on 21 January 2010 by the Commissioner, Mr Manuel Rodriguez. Affidavits sworn to on 25 January 2010 by Mr Luis Carballo, the Principal Education Officer, Education Manager, Cayo District, and on 23 February 2010 by Mr Omir Yam, Lands Inspector of the Cayo District, Ministry of Natural Resources and the Environment, were also filed on behalf of GOB. After hearing detailed submissions from the parties on the facts and on the law, Conteh CJ found that Mr Bruce had made good his challenge to the Minister's decision and granted the declaration sought accordingly.

[21] Referring to the provisions of section 17 of the Constitution of Belize ('the Constitution'), the learned judge observed (at para. 45) that the Constitution, "it is manifest, evinces a particular solicitude for the protection of property in several of its provisions." Thus, although section 3(1) of the Act empowers the Minister to initiate a process of compulsory acquisition in respect of land "required for a public purpose", section 3(5) secures to any person claiming an interest or right over the land a right of access to the court "for the purpose of determining whether the acquisition was duly carried out for a public purpose in accordance with this Act." By this provision, which is in keeping with the mandatory requirement of section 13(1)(b)(ii) of the Constitution, "a determination of whether the compulsory acquisition is for public purpose is vouchsafed to the courts" (para. 82, emphasis in the original). In making this determination, the Minister's declaration as to the public purpose for which the land is sought is prima facie evidence only that this is indeed the case.

[22] In this regard, the learned judge pointed out (at para. 72) that there was nothing in the evidence to indicate what had informed the Minister's consideration that the 4.4 acre plot should be acquired for a public purpose, and observed (at para. 73) that "elementary fairness and justice [required] 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".

[23] Conteh CJ also devoted some attention to the provisions of the Land Acquisition (Promoters) Act ('the LAPA'), which, he considered (at para. 59), established a "more transparent and objective" compulsory acquisition scheme, and concluded that, in the instant case, the provisions of that Act provided "the correct and proper statutory scheme" to which GOB should have had recourse.

[24] Conteh CJ accepted (at para. 88) the submission made on Mr Bruce's behalf that the compulsory acquisition in this case was not duly carried out for a public purpose in accordance with the Act and the Constitution. Further, he found himself (at para. 90) compelled by "the concatenation of circumstances" to the view that the taking of the 4.4 acre plot was not for a public purpose, on the basis of the following considerations:

> "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 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…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, as **a priori** determination had been made to compulsorily acquire the claimant's land in any case…This [is]…egregious;

ix) but even more egregious…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…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."

The appeal

[25] In a notice of appeal filed on 27 September 2010, the Minister relied on some seven grounds of appeal, as follows:

"Ground 1

The learned Chief Justice erred in law in finding that the acquisition of the Respondent's land, for the purpose of building a school, was not for a public purpose.

Ground 2

By finding that there was an alternative location, other than the Respondent's land, on which to build the school, the learned Chief Justice misdirected himself and erred in law.

Ground 3

The learned Chief Justice erred in law in finding that the acquisition was not carried out in accordance with the Land Acquisition (Public Purposes) Act, authorizing compulsory acquisition of land.

Ground 4

The learned Chief Justice erred in law by finding "no meaningful or realistic engagements to settle compensation" for compulsorily acquiring the Respondent's land as prescribed by the relevant law.

Ground 5

The learned Chief Justice erred in law in finding that the Minister could have acquired the Respondent's property, to facilitate the Church, through the Land Acquisition (Promoters) Act.

Ground 6

The decision is against the weight of the evidence.

Ground 7

As a consequence of his errors complained of in grounds 1 through 6 above the learned Chief Justice erred in law and misdirected himself in ordering that the Appellant's decision to compulsorily acquire the Respondent's land, 4.4 acres, as set out in the Schedule to the purported Declaration, compulsorily acquiring the Respondent's land, is an error of law, unreasonable and arbitrary."

[26] On ground 1, Mr Hawke referred us to the definition of 'public purpose' in section 2 of the Act, read together with section 4, and submitted that the public purpose in this case, which was for the building of a public school, "was and in accordance with the law".

[27] For expansive judicial definitions of 'public purpose', Mr Hawke referred us to the decisions of the Privy Council in **Harmabai Framjee Petit v Secretary of State for India in Council (1914) LR Vol. XLll Indian Appeals 44** and in **Williams v The Government of St. Lucia (1969) 14 WIR 177**. Further, to make the point that there is an "acknowledged partnership" between GOB and the Roman Catholic Church in the field of education he cited the decision of Conteh CJ himself in **Maria Roches v Clement Wade** (Action No. 132 or 2004, judgment delivered 30 April 2004). And lastly on these grounds, to make the point that a government can legitimately pursue a public purpose through a private entity, we were referred to the decision of the Court of Appeal of Antigua and Barbuda in **Baldwin Spencer v Attorney-General of Antigua and Barbuda and others** (Civ, App. No. 20A of 1997, judgment delivered 8 April 1998).

[28] On ground two, Mr Hawke submitted that the issue of whether there was land other than the 4.4 acre plot which could have been compulsorily acquired for the

church's purposes ought not to have been a part of the judge's consideration in the matter. Further, it was submitted in this regard, Conteh CJ "approbated and reprobated" by finding on the one hand that the purpose for which the land was acquired was not a public purpose, while at the same time finding that there was other land available for acquisition for that purpose.

[29] On ground three, while conceding that there were some "procedural irregularities" in the compulsory acquisition process, Mr Hawke maintained that there had nevertheless been "substantial compliance" with the Act. As regards the question of the right to a hearing, Mr Hawke also conceded, on the basis of the decision of this Court in the consolidated appeal in **British Caribbean Bank Ltd and Dean Boyce v The Attorney-General and the Minister of Public Utilities** (Civil Appeal Nos. 30 and 31 of 2010, judgment delivered 24 June 2011), but sought to distinguish that case on the basis that, in the instant case, the compulsory acquisition was clearly for a public purpose. Further, it was submitted, the learned judge erred in appearing to imply that "there was some sinister motive or some conspiracy between the Church and the Government to deliberately deprive the Respondent of his property."

[30] On ground four, Mr Hawke's submission was that GOB had made "every effort" to engage Mr Bruce with a view to negotiating reasonable compensation.

[31] And finally, on ground five, Mr Hawke submitted that it was "improper" for Conteh CJ to have made any finding based on LAPA, as that Act was designed to cover a different situation.

[32] Mr Musa SC, who had appeared for Mr Bruce from the very outset of the dispute over the compulsory acquisition of the 4.4 acre plot, reminded us that what the law mandates the Court to do is to ascertain "whether the acquisition was duly carried out for a public purpose in accordance with the Act" (Constitution, section 17(1)(b)(ii), the Act section 3(5)). In his detailed skeleton argument, he supported Conteh CJ's judgment in respect of all the grounds of appeal, basically for the reasons put forward by the learned judge. In his oral submissions, he was content to supplement his skeleton argument by pointing out the following:

(i) It was undisputed that the Minister had stated publicly on 12 January 2009 (the telecast to which Mr Bruce had referred) that the 4.4 acre plot was to be compulsorily acquired by GOB;

(ii) the church's lease of eight lots previously leased from GOB was allowed to lapse or was renounced, while, as Conteh CJ was right to suggest, it could have been extended for that purpose; there was accordingly no consideration of any alternative location for the school expansion;

(iii) the Minister breached basic rules of fairness and ought to have proceeded under the LAPA, which would have secured a more transparent process;

(iv) what the judge described as the "concatenation of events" gave rise to questions as to whether the taking had been duly carried out for a public purpose;

(v) the Minister had acted capriciously as evidenced, for example, by the fact that the Minister's declaration published in the Belize Gazette actually predated his letter to the CEO stating his conclusion that the 4.4 acre plot should be acquired for a public purpose;

(vi) the church's workmen were authorised to go on the 4.4 acre plot, in breach of section 4 of the Act; and

(vii) the relevant provisions of the Act were not complied with.

[33] We were also referred by Mr Musa to the well known decisions of the Court of Appeal of England and Wales in **Prest v Secretary of State for Wales (1983) 81 L.G.R. 193** and **R v Secretary of State for Transport and others, ex parte de Rothschild [1989] 1 All ER 933** (to both of which Conteh CJ had referred in his judgment), and to **British Caribbean Bank & Boyce v Attorney General**, which was decided in this court after Conteh CJ had given his decision in the instant case.

The statutory provisions

[34] The strong backdrop to any compulsory acquisition exercise in this country is provided by the Constitution, which specifically includes in section 3(d), as one of the fundamental rights and freedoms of the individual to which all persons in Belize are entitled, "protection from arbitrary deprivation of property". Thus section 17(1) provides 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."

[35] This clear constitutional imperative is met by the Act in section 3, in the following terms:

> "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 the 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.
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> (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."

[36] Section 4 provides that whenever it appears to the Minister that 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, he may cause a notification to that effect to be published in the Gazette". Thereafter, an authorised officer and his agents assistants and workmen may enter the land for the purpose of doing various things

listed in the section, such as taking surveys and levels, setting out boundaries, and the like and "all such other acts as may be incidental to or necessary for any of the [listed] purpose" (section 4(g)). Proviso (a) to this section provides that such entry into any building, enclosed yard or garden attached to a dwelling house must not be done "except at all reasonable hours,…with the consent of the occupier…[and] without previously giving to the occupier at least seven days' notice in writing of his intention to do so".

[37] The all important section 6 provides for the early negotiation of compensation to the landowner for compulsory acquisition of his property as follows:

> "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.

[38] I must also make reference to the relevant provisions of the Land Acquisition (Promoters) Act, to which Conteh CJ devoted considerable attention and which has also played a part in the Minister's submissions in this Court.

[39] In that Act, 'promoter' is defined (perhaps as unhelpfully as Conteh CJ found the definition of 'public purpose' in the Act to be – see his reference to "a somewhat Delphic definition" at para. 63 of his judgment) as "any corporation, company or person desirous of acquiring land under the provisions of this Act". Section 3(1) of the Promoters Act provides that, subject to its provisions", upon an application to the Minister and payment of a deposit sufficient "to defray the inquiry required to be made", under section 3(4). Section 3(4) provides that, upon the deposit being made, the Minister shall 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 in likely to prove useful to the public as a substantial class or section of the public". Upon

completion of the inquiry, a record of it shall be laid on the table of the National Assembly, which may by resolution "approve or decline to approve the compulsory acquisition of the whole or any part of the land described in the application" (section 3(7)). Thereafter, if the compulsory acquisition is approved by the National Assembly (which shall not do so 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 a substantial class or section of the public"), the land will vest absolutely in promoter upon publication of a notification to that effect in the Gazette (section 3(8)).

Discussion and analysis

Ground – 1 the public purpose

[40] The Minister's complaint in this ground, it will be recalled, is that the Chief Justice erred "by finding that the acquisition of [Mr Bruce's] land, for the purpose of building a school, was not for a public purpose."

[41] In **Harmabai Framjee Petit**, to which Mr Hawke referred us on this ground, a two member panel of the Judicial Committee adopted (at page 47) Butchelor J's statement at first instance that "the phrase 'public purposes' … 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 or vitally concerned."

[42] And in **Williams v Government of St Lucia**, to which Mr Hawke also referred us, where the public purpose was said to be "the development of tourism", the Board said this (at page 80):

> "That the promotion of tourism can be a public purpose in the Island of Saint Lucia can scarcely be denied … No doubt, the expression 'the development of tourism' has a degree of vagueness but that is called for by the Ordinance is a statement of a public purpose, which necessarily must be in very general terms. The Ordinance, in their Lordships' opinion, is satisfied by a statement of the objective is to be

achieved. It is a purpose and not a method which has been stated. The expression 'the development of tourism' does state a purpose and not a method which has been stated".

[43] No one could possibly gainsay the validity in their context either of these statements of high authority on what the phrase 'public purpose' is apt to comprehend. Indeed, in **Baldwin Spencer v Attorney General**, Byron CJ (Ag), as he then was, described **Harmabai Framjee Petit** (at page 14) as "[t]he root decision on the meaning of public purpose".

[44] However, despite his observation (at para. 81) that "I would, of course, all things being equal, give deference and weight to those wise judicial words on what is 'public purpose'," Conteh CJ was especially careful not to commit himself to a definition of the phrase, but instead said this at paras, 83 – 84):

> "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."

[45] It seems to me that there may in fact be, and I naturally say this with the greatest of respect, more than an element of contradiction in Conteh's CJ's approach to the question of the court's duty in cases such as these. On the one hand, the learned judge explicitly avoids even the most general definition of public purpose and disavows any role for the Court in determining whether a particular declared public purpose can fall within such a definition, while on the other hand, he insists, it is the duty of the court to determine whether a compulsory acquisition "was duly carried out for a public purpose".

[46] I would have thought that it was fully within the court's competence – and duty – to consider in the first place whether the Minister's stated public purpose is capable of amounting to a public purpose in any accepted, or acceptable, sense of the phrase; viz, "an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly or vitally concerned" (**Harmabai Framjee Petit** – see para. 41 above). By this reason, the court would be obliged to determine whether the declared public purpose, even if stated in the most general terms (such as "the development of tourism"), is a sufficient statement of "the public purpose for which the land is required", which is what section 3(3)(d) of the Act calls for.

[47] This is, of course, not an exercise that need detain the court unduly unless it is a matter in issue (see, as an example of a case in which it was not, **British Caribbean Bank and Boyce v Attorney-General** , para. [117]. In the instant case, I do not understand it to have been contended, or Conteh CJ to have suggested, that the Minister's declared public purpose for the compulsory acquisition of the 4.4 acre plot (Public School"), even if somewhat laconically expressed, was incapable of being a public purpose. It seems to me to be beyond question that the building of a public school would be an object or an aim pre-eminently capable of serving the general interests of the Benque Viejo del Carmen area. In this regard nothing turns, in my view, on whether the actual day to day management and operation of the school was to be the responsibility of the church, given, as Mr Hawke was anxious to point out, 'the publicly avowed acknowledged partnership between [GOB] and the Church … in the field of education" (per Conteh CJ himself at para. 20 of his judgment in **Maria Roches**; see also per Mottley P at paras, 10 – 18 of his judgment in this court in the same case).

[48] But once this threshold has been crossed, Conteh CJ's statement that it is the duty of the court to determine whether the compulsory acquisition "was duly carried out for a public purpose in accordance with the Act", must, it seems to me, be wholly uncontroversial. That indeed follows from the plain language of section 3(5), which (as required by section 17(1)(b)(ii) of the Constitution) secures to persons claiming an interest in or right over the land which it is sought to compulsorily acquire "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".

[49] This is the basis on which Conteh CJ concluded that the compulsory acquisition of the 4.4 acre plot was not done in accordance with the Act. In considering this question, he was not bound to proceed on the basis advanced on behalf of the Minister on this ground, that is, "that once it is for the benefit of the general community and public, which … the provision of education by the school is, the acquisition was proper and in accordance with law and for a public purpose." That, as Conteh CJ observed (at para. 79("is not constitutionally and legally the case in Belize today".

Ground 2 – the relevance of other available land

[50] Conteh CJ found (at para. 90(ii)) that "there was an alternative location for the school other than Mr Bruce's land". Mr Hawke's complaint is that in so doing the judge was in fact suggesting that the "alternative land was best suited for the public purpose".

[51] **Brown v Secretary of State for the Environment**, to which we were very helpfully referred by Mr Musa, was a case in which the respondent local authority, with a view to providing a caravan site for gypsies, pursuant to a statutory duty to do so, made a compulsory purchase order in respect of land owned by the applicants. The applicants, along with others, objected and an inquiry was held. A designated inspector found that there were five other sites available to the local authority, including one already owned by it, and that the applicants' site "was probably the worst and certainly is unsatisfactory for a number of reasons". The reasons for this conclusion were stated in detail in the inspector's report, which Forbes JK described (at page 289) as "a model of its kind … clearly expressed, wholly ..... and admirable in every way".

[52] In his decision letter confirming the order, the Secretary of State said the following:

> "However, the issue before the Secretary of State is not whether there are more suitable sites … but whether the [applicants'] land is a site in respect of which he is prepared to confirm a compulsory purchase order … the Secretary of State is solely concerned with the merits or otherwise of the order land, and he does not think it is material to his decision to consider whether or not the [local authority] would have chosen the [applicants'] land if they had considered all the possible locations at the same time."

[53] Forbes J granted the applicants' application to quash the Secretary compulsory purchase order, holding that in considering whether to confirm the order it was a material consideration that there were other sites available, including one already owned by the local authority. By regarding that consideration as immaterial, the Secretary of State had accordingly misdirected himself in law and the decision had necessarily to be quashed. The learned judge said this (at pages 291 – 2):

> "It must also, it seems to me, be a matter of supreme importance, in considering whether or not to confirm a compulsory purchase order, that not only is there another suitable site available but that that very site happens to be in the ownership of the authority that is seeking to exercise compulsory purchase powers. It seems to me that there is a very long and respectable tradition for the view that an authority that seeks to dispossess a citizen of his land must do so by showing that it is necessary, in order to exercise the powers for the purposes of the Act under which the compulsory purchase order is made, that the acquiring authority should have authorisation to acquire the land in question. If, in fact, the acquiring authority is itself in possession of other suitable land – other land that is wholly suitable for that purpose – then it seems to me that no reasonable Secretary of State faced with that fact could come to the conclusion that it was necessary for the authority to acquire other land compulsorily for precisely the same purpose. That is really the reason why the applicants put in ground 1 [of their notice of motion], and it seems to me to be a good and valid reason. If, as the matter stood when it was put before the Secretary of

> State, it was plain that this acquiring authority owned land suitable for the purposes of the Act – indeed, according to the inspector more suitable for the purposes of the Act than the applicants' land – then it seems to me quite clear that the acquiring authority can show no necessity for the exercise of compulsory purchase powers, and necessity for the exercise of compulsory purchase powers is what must be shown in a case of this character."

[54] Forbes J's decision was cited with clear approval by the Court of Appeal of England and Wales in **ex parte Rothschild**, where Slade J described it (at page 936) as illustrating "a conventional application of *Wednesbury/Ashbridge* principles, namely on the grounds that the Secretary of State had failed to take in consideration a matter which he ought to have taken into account". The learned judge's reference to "**Wednesbury/Ashbridge** principle" if, of course, to the well known decisions in **Associated Provincial Picture House Ltd v Wednesbury Corp [1948] 1 KB 223** (upon which Conteh CJ also relied in this case) and **Ashbridge Investments Ltd v Minister of Housing and Local Government [1965] 3 All ER 371, 374** (in which Lord Denning MR observed that the court can interfere with a minister's decision if, among other things, "he has taken into consideration matters which he ought not to have take into account, or vice versa").

[55] However, **in ex parte Rothschild**, in addition to considering **Wednesbury/Ashbridge** principles to be applicable in the field of compulsory purchase, also made a further point (at page 935):

> "… it has to be borne in mind that the compulsory purchase of land involves a serious invasion of the proprietary rights of citizens. As Purchas LJ described them in **Chilton v Telford Development Corp** …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 one to be exercised lightly and without good and sufficient cause."

[56] To these clear statements of principle one might also add the following observation of Watkins LJ in the well known and oft-cited case of **Prest v Secretary of State of Wales (1982) 81 LGR 193, 201**:

> "In the sphere of compulsory land acquisition, the onus of showing that a compulsory purchase order has been properly confirmed rests squarely on the acquiring authority … the taking of a person's land against his will is a serious invasion of proprietary rights. The use of statutory authority for the destruction of those rights requires to be most carefully scrutinised. 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."

[57] It seems to me that all of those considerations find a clear resonance in the provisions of, firstly, the Constitution, which explicitly recognises the "protection from arbitrary deprivation of property" as a fundamental right (section 3(d)) and circumscribes within stated limited the power of the State to violate that right by compulsory acquisition (section 17); and secondly, the Act itself. I would therefore regard it as a fundamental principle of our constitutional law in this country that the power to compulsorily acquire property is an exceptional one and will in every case attract from the court the most anxious scrutiny to ensure that it has been carried out in accordance with the law, and after taking into consideration all relevant factors. All of this is ……., it seems to me, in the obligation placed on the court by section 3(5) of the Act to ensure that the compulsory taking "was duly carried out for a public purpose in accordance with the Act".

[58] In this exercise, the availability of a suitable alternative to the 4.4 acre plot, particularly one which was not only already owned by GOB, but was in fact already under lease to the church, is in my view a logically relevant consideration. It provides a context within which to assess whether it was in fact necessary to acquire the 4.4 acre plot for the furtherance of the stated public purpose in this case or, to

put it the other way, whether the compulsory acquisition of the 4.4 acre plot was duly carried out for the stated public purpose (which is in fact the exercise which this court undertook in **British Caribbean Bank and Boyce v Attorney-General**, a case in which, as I have already pointed out, there was no dispute that the stated purpose was in fact capable of amounting to a public purpose – see para. [47] above). If there was an alternative, the suitability of which has either been ignored or, as in this case, apparently not sufficiently explored (beyond the bare assertion that the eight lots would be "too small to accommodate a new primary school" – see para. 29 of Mr Rodriguez's affidavit), then I would consider it impossible to avoid the conclusion that the decision to compulsorily acquire the 4.4 acre plot was unreasonable.

[59] I would accordingly conclude on this ground that Conteh CJ was entirely correct to take into account the availability of a suitable alternative in this case.

Ground 3 – was the acquisition carried out in accordance with the Act?

[60] Conteh CJ found (see para. 90 (vii) that the acquisition "was not carried out in accordance with the law authorizing compulsory acquisition of land". Specifically, he found that there was no evidence that a copy of the Minister's declaration had been "exhibited at suitable places in the locality in which the land is situate", as required by section 3(2) of the act. The "practical purpose and effect of this requirement", Conteh CJ observed (at para. 88), "is to bring home to the landowner whose land is being acquired and the local community for whose benefit that land is being acquired what is being done". It strikes me that compliance with this requirement would have been particularly important in the instant case, given that, as recently as 21 September 2008, Mr Bruce had been assured of GOB support in his own plans for the 4.4 acre plot by Minister Contreras; and further it would at the very least have saved him from having to discover that GOB's stance had in this regard had changed by seeing and hearing the very Minister Contreras making a public announcement on television to this effect on 12 January 2009.

[61] Mr Hawke, although very properly conceding that not all the requirements of the Act were carried out in this case, nevertheless invited the Court to apply "the principle of regularity", without expanding on the precise meaning and content of that

notion". But if what Mr Hawke had in mind was that we should approach the question of compliance with the Act in accordance with the principle embodied in the maxim *omnia praesumuntur rite et solemniter esse acta*, then I am clearly of the view that it can have no application in the context of an inquiry whether compulsory acquisition has been duly carried out for a public purpose in accordance with the Act. (In this regard, it may be of passing interest to note that the meanings of the adverb 'duly' is stated by the Oxford English Dictionary to be "in accordance with what is required or appropriate, following proper procedure or arrangement".)

Ground 4 – the issue of compensation

[62] Conteh CJ considered (at para. 32) that from the evidence, "it is manifest that there has not been proffered to Mr Bruce any meaningful offer of compensation for his land". Mr Hawke contends that the learned judge erred in coming to this conclusion, as Mr Rodriguez's affidavit demonstrated that "the Minister made "every effort to engage [Mr Bruce] with a view to arriving at reasonable compensation".

[63] I have already set out the terms of section 6(1) of the Act (at para. __ above), which require the Minister to enter into negotiation to purchase the land compulsorily acquired upon reasonable terms and conditions, as soon s the declaration required under section 3(1) has been published. Conteh CJ considered (at para. 35), and this appears to be justified by the actual language of the section, that it is "meant to ensure **speedy** resolution of the issue of compensation" (emphasis in the original).

[64] In this case, the Minister's declaration was published in the Gazette for the second time on 21 February 2009. There were, it is clear, no preliminary negotiations (as contemplated by section 6(2)) before publication of the declaration. It was not until 11 March 2009 that a letter (which according to Mr Bruce's uncontradicted evidence was delivered to him by Mr Rodriguez on 3 April 2009) was written to Mr Bruce confirming the compulsory acquisition of the 4.4 acre plot and inviting him to respond "stating your claim for compensation so that a mutually agreed price may be determined with undue delay".

[65] Further correspondence from the Ministry and the Commissioner, on 27 April and 13 May 2009 respectively, made no reference to compensation, but required Mr Bruce, on pain of legal action, "to cease and desist from occupying and effecting further developments on [the 4.4 acre plot]" (see the letter dated 13 May 2009).

[66] In a letter to the Minister dated 27 May 2009, Messrs Musa & Balderamos, acting as attorneys-at-law for Mr Bruce, while reiterating that he "strenuously opposes the purported acquisition of his property", advised that the property had "a market value of $1 million according to a valuation received by our client". However, the response dated 22 June 2009 did no more than to state that the Minister was "still awaiting" Mr Bruce's claim for compensation. Messrs Musa & Balderamos replied by a letter dated 29 June 2009, proposing a compromise (the details of which are no longer relevant) and enclosing a valuation report in which the 4.4 acre plot was valued at $1.2 million, "without taking into account expenses incurred in preparation of [the] Water Tank development project or indeed without taking into account damages sustained by reason of severance from our client's remaining property which has been injuriously affected by reason of the acquisition".

[67] Notwithstanding the fact that this last letter seemed to provide a clear basis upon which at the very least an opening offer of compensation might have been made to Mr Bruce, it went answered. This led Musa & Balderamos to protest in its follow up letter to the Minister dated 21 October 2009 that "your Ministry has completely ignored its statutory declaration to enter into negotiations with our client for the purchase of the land following the declaration of the acquisition … [t]his is a clear violation of section 6 of the Act."

[68] In these circumstances, it seems to me that Conteh CJ was fully entitled to conclude as he did (at para. 37), that "it is difficult to find that

[69] In the light of this evidence, all of which was exhibited by Mr Rodriguez to his affidavit, it seems to me that Conteh CJ was fully entitled to conclude, as he did (at para. 37) that section 6 had not been complied with and, further, that the issue of compensation for the taking of the land had not been "seriously engaged or pursued". Indeed, Conteh CJ also observed (and, notably, we were not told anything

to the contrary by Mr Hawke) that up to the conclusion of the trial, the issue of compensation was still outstanding.

Ground 5 – the Land Acquisition (Promoters) Act

[70] Conteh CJ concluded (at para. 59), after consideration of the general scheme and provisions of the Land Acquisition (Promoters) Act, that in order to facilitate the 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". The primary reason for this conclusion appears to be the learned judge's view that the acquisition process under this Act "would be more transparent and objective".

[71] While I would obviously not go as far as Mr Hawke did in his printed skeleton argument to suggest that it was "improper" for the court below to have made such a finding, it nevertheless appears to me that it was purely gratuitous in the circumstances of the case. Even if the Land Acquisition (Promoters) Act does provide an indistinguishable alternative to the Act for compulsory acquisition in the circumstances of this case, it appears to me that, in the absence of a clear statutory mandate to choose one method over the other, the choice must be a matter for the election of the Minister and GOB.

[72] There is in any event, in my view, a clear and fundamental conceptual difference between the two statutes. The Act, on the one hand, is concerned with compulsory acquisition by GOB for a public purpose (whether that purpose falls to be actualised operationally by GOB acting by itself or in common with the church, its generally acknowledged partner in the field of education). The Land Acquisition (Promoters) Act, on the other hand, is concerned with the compulsory acquisition of land by promoter, a private person, whether natural or corporate, for a purpose which need not necessarily be public, albeit that it is one which is "likely to prove useful to the public or to a substantial class or section of the public (section 3(7)).

[73] In the instant case, I would therefore accept Mr Hawke's submission that the acquisition of Mr Bruce's land can only be attributed to the undoubted public purpose

of providing educational opportunities for the Benque Viejo del Carmen area and accordingly that it is to the Act only that the court should look to ensure that the acquisition was duly carried out according to law.

[74] However, to the extent that I have, naturally intending no disrespect, characterised Conteh CJ's foray into the Land Acquisition (Promoters) Act as gratuitous, it is clear that my conclusion in favour of the Minister on this ground can by itself have no impact on the outcome of the appeal itself.

The remaining grounds (6 and 7)

[75] Mr Hawke offered no submissions in support of either of those grounds. Ground 6 complained that Conteh CJ's decision was against the weight of the evidence, and ground 7, which complained that, on the basis of all the matters complained of on grounds 1 through 6, the learned judge erred in law and misdirected himself in ordering that the decision to compulsorily acquire the 4.4 acre plot should be set aside. It follows from all that I have so far said in this judgment that these grounds cannot succeed.

One further matter – the right to be heard

[76] In the course of his refreshingly candid submission before, Mr Hawke told the court that, in the light of the unanimous decision of this court in **British American Bank and Boyce v Attorney General**, he was significantly troubled by the fact that Mr Bruce was been given no opportunity to be heard on the question of compulsory acquisition of his land. For my own part, I share Mr Hawke's concern.

[77] There is no provision in the Act that mandates a hearing in these circumstances. Nevertheless, Conteh CJ expressed the view (at para. 74) that [it is] 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".

[78] In **British American Bank & Boyce v Attorney General**, Legall J at first instance accepted, (at para. 125) that "generally, the right to be heard and fairness are legally required", but considered that there were exceptions, the most important of which was "there is no right to be heard before making legislation, whether primary or delegated unless it is provided by stature" (Wade, Administrative Law, 8th edn, page 44).

[79] In this court, after a review of a number of Commonwealth authorities, both myself and Carey JA, with whom Alleyne JA agreed, accepted that in any case in which a decision "is calculated to cause particular prejudice to an individual or particular groups of individuals, the person has a right to be heard" (per Carey JA at para. 283; and see per Morrison JA at paras. 176 – 199).

[80] In the instant case, there being no question that Mr Bruce would have been seriously prejudiced, by the loss of almost a half of his land and a considerable investment, I consider that Conteh CJ was also correct to suggest that elementary fairness and justice demanded that he be given an opportunity to be heard. In this way, not only Mr Bruce's concerns, but "all the facts of the case" which the Minister stated that he had considered, as well as the position of the church, could have been fully ventilated in a transparent manner.

Conclusion

[81] Those are my reasons for concurring with my brethren in the order set out in para. [1] if this judgment.

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MORRISON JA