REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

No. 4730 of 1988

IN THE MATTER OF THE TOWN AND COUNTRY PLANNING ACT CHAP. 35:01

BETWEEN

MANSOOR IBRAHIM
(Substituted as the Plaintiff in place of Tawfiq Ur Rahman, deceased by Order of the Honourable Mr. Justice Best dated 28th January, 2009)

PLAINTIFF

AND

THE MINISTER OF PLANNING, DEVELOPMENT AND MOBILISATION

AND

THE COMMISSIONER OF STATE LANDS

DEFENDANTS

****

JUDGMENT

****

Before the Honourable Mr. Justice A. des Vignes

Appearances:
Mr. Manwah instructed by Mr. Abdul Hafeez Ali for the Plaintiff

Mr. Elton Prescott, S.C., Ms. Aisha Donawa
Instructed by Ms. Grace Jankey for the Defendants

1. On 16th November, 1998 The Honourable Mr. Justice Best ordered that Plaintiff's compensation payable under Part IV of the **Town and Country Planning Act**, Chap. 35:01 be assessed in respect of the modification by the Minister[1] of Outline Planning Permission granted to the Plaintiff on 8th June, 1977.

2. The compensation payable to the Plaintiff now falls to be assessed by this Court. The assessment is in respect of lands belonging to the Plaintiff, described as parcel "B" and comprising 24 Acres 1 Rood and 9 Perches, located south of the Amoco Road (also known as the Galeota Road) in Mayaro in the ward of Guayaguayare.

Background

3. The Plaintiff[2] is the owner of lands situate in Guayaguayare comprising 44 acres 3 roods and 8 perches ("the said lands"). These lands are a rectangular parcel that are bisected by the Galeota Road, with a parcel measuring 18 acres 1 rood and 33 perches to the north ("parcel A") and a parcel measuring 24 acres 1 rood and 9 perches to the south ("parcel B").

4. On 8th June, 1977 the Plaintiff was granted Outline Permission by the Town and Country Planning Division ("the TCPD") for mixed residential, commercial and industrial development in respect of both parcels. The outline approval contained a limitation that the permission would lapse unless certain plans and particulars were submitted to the Minister within one year of the said approval. The Plaintiff did not comply with the one year limitation and on at least six (6) occasions thereafter he applied for and was granted extensions of time of one year each to submit the required plans and particulars, with the last one-year extension being granted to take effect from 15th June, 1984.

5. Following Parliament's approval of the National Physical Development Plan in July 1984 certain areas in Guayaguayare were allocated for agricultural and not built-up purposes.

[1] The Minister of Planning Development and Mobilisation

[2] By Order of the Honourable Mr. Justice Best dated 28th January, 2009 Mansoor Ibrahim was substituted as the Plaintiff in place of Tawfiq Ur Rahaman, who passed away on 10th December, 2008.

Parcel B fell within the area so earmarked. Either on 11th October or 15th November, 1984 the Plaintiff was informed by one Ray Saney, Town Planner II at the San Fernando Office of the TCPD, of the change in policy and advised that urban development would only be allowed in respect of parcel A and that parcel B (the subject matter of these assessment proceedings) could not be developed for residential, commercial and industrial use.

6. On 15th November, 1984 the Plaintiff submitted a new application to the TCPD. However, by letter dated 30th April, 1985 the Plaintiff withdrew this application and sought an extension, for a further period of one year, of the Outline Approval that was granted to take effect from 15th June, 1984. By letter dated 22nd August, 1985 the Minister refused to grant the extension. The reason given was that the planning policy for the area in which the lands belonging to the Plaintiff were situated had changed.

7. By letter dated 3rd February, 1986 the Plaintiff wrote to the Minister seeking compensation, for what he interpreted as the revocation of the permission already given. The Minister refused the Plaintiff's request stating that there had been no revocation of planning permission within the meaning of the Act and that the Outline Planning Permission had, in any event, lapsed as the required plans and particulars were not submitted by 14th June, 1985.

8. By Originating Summons filed on 21st September, 1988 the Plaintiff commenced legal proceedings against the Defendants for the assessment of compensation pursuant to Part IV of the Act "in respect of the Minister's refusal of Outline Planning Permission to develop the said lands".

The Honourable Justice Best's decision

9. On 20th April, 1990 the Honourable Mr. Justice Hosein ordered that the question as to whether there was in fact a planning decision by the Minister involving a refusal of planning permission to develop the said lands, be tried as a preliminary issue. The hearing of this preliminary issue took place before the Honourable Mr. Justice Best and the Judgment was delivered on 16th November, 1998. The Judge found that the original

grant of planning permission had not lapsed by effluxion of time but existed as at 22nd August, 1985[3] in an altered form as a result of the advent of the National Physical Development Plan of 1984. The consequence of this alteration, the Judge found, was that there was a severance of the permission and that the severance constituted a modification and not a refusal of planning permission within the meaning of S. 15(1) of the Act. The Judge also found that the said letter of 22nd August, 1985 was in effect the Order of the Minister modifying the Permission and the letter from the Plaintiff's Attorneys dated 3rd February, 1986 was the claim for compensation in compliance with S. 15(3) of the Act. The Judge therefore, ordered that Plaintiff's compensation payable under Part IV of the Act be assessed in respect of the modification by the Minister of the Outline Planning Permission granted to the Plaintiff on 8th June, 1977. On 25th June, 2008 the Judgment was amended to specify the precise area of land affected by the Minister's modification and the Order was accordingly rectified for the assessment to proceed in respect of Parcel B comprising 24 acres 1 rood and 9 perches.

Assessment of Compensation

10. The relevant Acts in these proceedings are the **Town and Country Planning Act** Chap.35:01 ("TCPA") and the **Land Acquisition Act** Chap 58:01 ("LAA").

Relevant Provisions: Town and Country Planning Act

11. The relevant provisions under the TCPA are: **S. 15 (3)** which provides that where a claim for compensation is made within the requisite period, the Minister shall pay to any person interested in the land compensation in respect of (i) any expenditure incurred in carrying out work that is rendered abortive by the revocation or modification (this includes any expenditure incurred in the preparation of plans for the purposes of any work or upon similar matters preparatory thereto[4]); and (ii) any loss or damage that is directly attributable to the revocation or modification.

[3] The date on which the Minister refused to grant the extension of the outline planning permission

[4] S. 15(5)

12. **S.15 (4):** which provides that no compensation is payable in respect of loss or damage consisting of the depreciation in value of any interest in the land by virtue of the revocation or modification.

13. **S. 15(5):** which states that no compensation is payable in respect of any work carried out before the grant of the permission that is modified or revoked, or in respect of any loss or damage (not being loss or damage consisting of depreciation in value of an interest in land) arising out of anything done or omitted to be done before the permission was granted:

14. **S. 26 (1)** is also relevant. According to that section compensation under the TCPA is to be assessed in accordance with the provisions of the **Land Acquisition Act** (LAA). The section reads as follows:

> *"**26.** (1) If on a claim made to the Minister in the manner prescribed by Regulations made under the Act, it is shown that, as a result of a planning decision involving a refusal of permission or a grant thereof subject to conditions,* ***the value of the interest of any person in the land to which the planning decision related is less than it would have been if the permission had been granted or had been granted unconditionally, then the Minister shall, subject to the provisions***[5] ***of the Part, pay to that person compensation (to be assessed in accordance with the provisions of the Land Acquisition Act), of an amount equal to the difference****."*

15. For the purposes of the instant matter this section shall have effect as if for the words "if the permission had been granted or had been granted unconditionally" there were substituted the words "if the permission had not been revoked or had not been modified": **S. 15 (7).**

[5] S. 29(4) provides that in default of determination by agreement, compensation payable under Part IV of the Act is to be determined in accordance with the procedure of the Land Acquisition Act (LAA). It is not in dispute that compensation in this case is to be determined in accordance with the rules of assessment under the LAA.

Relevant Provisions: Land Acquisition Act

16. In the context of these proceedings the relevant aspects of the LAA are the rules of assessment of compensation as outlined in **Part III** of that Act. Of particular importance is **S. 12 (1)(a)**, which states as follows:

> *"**12.** (1) The assessment of the amount of compensation shall be made in accordance with the following rules:*
>
> *(a) the value of land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, in the condition in which it was, might be expected to realise at the date of the taking of possession of the land under section 4(1) or the date of publication in the Gazette of the declaration made under section 5(3), whichever is the earlier".*

Issues

17. It is agreed between the parties[6] that the issue for the Court to decide is as follows:

> *"The difference between*
>
> *(1) The open market value of the lands described as comprising 24 Acres, 1 Rood and 9 Perches, situate at Galeota Road, with Outline Planning Permission for residential, commercial and industrial development and*
>
> *(2) The open market value of the said lands with Outline Planning Permission for agricultural use as at 22nd August 1985, date of modification of Outline Planning Permission."*

18. The Plaintiff in his Statement of Unagreed Issues filed on 16th July, 2010 identified the following additional issues:

(i) whether or not the Plaintiff is entitled to loss of profit; and

[6] See Statement of Agreed Issues(s) filed on 29th June, 2010.

(ii) if the Plaintiff is entitled to loss of profit, what is the quantum he is entitled to.

The Agreed Issue

19. In order to determine this issue, the Court is required to determine firstly, in accordance with section 12 (1)(a) of the LAA, the amount which the land, if sold in the open market by a willing seller, in the condition in which it was before the modification (namely, with approval for residential, commercial and residential use) might be expected to realise at 22nd August, 1985. Then, the Court is required to determine, again in accordance with section 12 (1)(a), the amount which the land, if sold in the open market by a willing seller, in the condition in which it was after the modification (namely, with approval for agricultural use only) might be expected to realise as at the same date. The difference between these two amounts would be the compensation payable to the Plaintiff.

The Plaintiff's Case

20. Mr. Manwah, who appeared on behalf of the Plaintiff, called two witnesses in support of the claim for compensation, namely Mr. Solomon Weekes, Chartered Valuation Surveyor and Mr. Willie Roopchan, Chartered Quantity Surveyor, both of whom had deposed to affidavits filed herein on the 16th July 2010 and which were put into evidence at the assessment as their evidence-in-chief.

Evidence in Chief of Solomon Weekes (the Weekes report)

21. Mr. Weekes gave evidence of his experience as a qualified Valuation Surveyor with some forty (40) years experience in his field. He worked at the Valuation Division, Ministry of Finance from 1971 until 1998, when he retired as an Assistant Commissioner of Valuations. Thereafter, he has practised as Chartered Valuation Surveyor, Real Estate Agent and Property Consultant providing valuations for various types of developments throughout Trinidad and Tobago for commercial, industrial, agricultural and residential properties.

22. In March 2007, he received instructions from the late Mr. Rahaman to prepare a valuation opinion on the current open market value, as at 3rd February, 1986 of the two contiguous

parcels of lands situate at Amoco Road in Guayaguayare, namely Parcel A (comprising 18 acres 1 rood and 33 perches) and Parcel B (comprising 24 acres 1 rood and 9 perches) with due regard to (i) its restricted use of 57% for agriculture and remainder residential/commercial development; and (ii) the proposed use of the entire site for comprehensive residential, industrial and commercial use. He was also requested to prepare a claim for compensation under Part IV of the TCPA. Mr. Weekes said that he was also instructed to prepare a valuation opinion on the current open market value, as at 3rd February, 1986, of Parcel B with due regard to its restricted use for agriculture and proposed use for comprehensive development, that is, residential, industrial, commercial and recreation use.

23. In accordance with these instructions, Mr. Weekes said that he prepared two (2) valuation opinions the first dated 11th March, 2007 ("SW1") and the second dated 12th April, 2007 ("SW2) respectively.

24. Since these proceedings are in respect of Parcel B only, it is to the report dated 12th April, 2007 that the Court will direct its attention. In that report, Parcel B is described as being irregularly shaped and having a frontage of approximately 600 ft onto Amoco Road and a sea frontage of approximately 550 ft on its southern boundary. On the dates when the property was inspected (3rd and 28th March 2007 and 5th April, 2007) the site was covered in secondary forest. There was no indication that any works were being carried out thereon.

25. Mr. Weekes expressed the opinion that the open market value of parcel B as at 3rd February, 1986, <u>for agricultural use only</u>, was <u>$245,000.00</u>. In arriving at this valuation he used what he called the direct comparison method, which method he said is based on arms length sales of similar lands in the area or comparable areas. He stated, however, that there was a paucity of market evidence of sales of similar lands, i.e. agricultural lands, in the locality so that, his comparison was based on sales of lands in the Mayaro, Gulf View and Bonne Aventure Road areas. He annexed to his Report a table giving details of the transactions related to these properties which included sales of vacant lots, developed, residential and commercial lands between 1983 and 1988.

26. In respect of the value of the said parcel of land, with outline planning permission for residential, commercial and industrial development, Mr. Weekes expressed the opinion that the open market value of the unencumbered freehold interest in the property prior to the modification of the outline planning approval was $17,500,000.00. In coming to this figure, Mr. Weekes utilised the residual valuation method, that is to say, he estimated the gross development value of Parcel B as $26,470,000 from which he deducted $7,178,750.00 for outgoings[7], leaving a balance of $19,291,250.00. He then discounted that figure to arrive at a present value of $17,750,000.00. (See Appendix 1B of "SW 2").

27. Based on Mr. Weekes' valuation, therefore, the difference between the open market value of Parcel B with Outline Planning Permission for residential commercial and industrial development and the open market value thereof with Outline Planning Permission for agricultural use is $17,500,000, ($17,750,000.00 less $245,000.00 = $17,505,000)

Evidence of Mr. Weekes under cross-examination

28. Under cross-examination, Mr. Weekes gave evidence that the mere existence of outline planning permission does not immediately increase the value of land unless the owner of the land had performed the necessary work to comply with the conditions imposed upon the owner by the Town and Country Planning Division. He also explained that in arriving at the gross development value of $26,470,000, he made certain assumptions: firstly, that the land had already been developed into residential and commercial lots; and, secondly, the cost of the outgoings for such development would be in the amounts stated in Appendix 1B.

29. He was then asked what the value of the land would be if the development works were not done and he stated that the value would be $6,000,000 and that the grant of outline planning permission would increase the value of the land. However, when asked if his report stated by how much the value of land would increase because of the grant of outline planning permission, he stated that his report did not express any opinion on that

[7] Site preparation, clearing, filling, levelling and grading; construction of roads and drains; installation of electricity; sewerage cost; Land Surveyors, Quantity Surveyors and Engineer's fees; financing fees; advertising and legal fees; developer's profit of 15%

figure because he was not asked to do that. Eventually, when pressed to indicate whether his report expressed an opinion as to the market value of the land without the assumptions he made in Appendix IB, Mr. Weekes responded that he had not expressed that opinion because he had not been asked to do so.

30. He also stated that based on the paucity of evidence of sales of parcels of land of comparable size in that locality, the table annexed to his report of sale transactions showed what people would be expected to pay for a lot of land for a dwelling for executive purchasers in the oil sector and could not help the Court to determine what properties like Lot B would have sold for.

Evidence-in-chief of Willie Roopchan (the Roopchan report)

31. Mr. Roopchan is a Chartered Quantity Surveyor who has been practising in his field for more than twenty five (25) years. He said that in September 2005, he received instructions from the late Mr. Rahaman, who had a proposed housing development project in respect of his lands in Guayaguayare. Mr. Rahaman's instructions were for him to prepare a report on an estimation of loss of profit likely to have been generated if phase 1 of the project was implemented. In accordance with these instructions he prepared a report dated 1st May, 2006 together with particulars for phase 2 of the said project. His report reflected an estimate of the revenue to be earned from the sale of housing and commercial units less outgoings such as development costs for construction of roads, sewage treatment facilities, construction of the units, legal and finance charges leaving a net present value of $23,522,380.00.

Evidence of Mr. Roopchan under cross-examination

32. Under cross-examination, however, Mr. Roopchan frankly admitted that as a Quantity Surveyor, he dealt with construction costs and that he did not know the method for determining the market value of the land.

33. Accordingly, based on this evidence, Mr. Roopchan could not be of any assistance to the Court in determining the Agreed Issue of the open market value of the land before and after the modification in August 1985. His evidence could only be relevant, therefore, to

the Un-agreed issue of the amount payable to the Plaintiff for loss of profit in the event that the Court finds that loss of profit is payable.

The Defendant's Case

34. The Defendant called only one witness, Mr. Ganga-Persad Kissoon, Chartered Valuation Surveyor, who had filed an affidavit on the 21st May, 2010 and a Supplemental Affidavit on 22nd February, 2011. These affidavits were put into evidence at the assessment as his evidence-in-chief.

Evidence-in-chief of Ganga-Persad Kisoon

35. Mr. Kissoon gave evidence that he has been practising as a Valuer in Trinidad and Tobago since 1992 and that as at the date of his affidavit, he held the position of Assistant Commissioner, Valuation since 1998.

36. His instructions were to prepare valuations of the land as at the date of the purchase by the Plaintiff in 1977, as at the date of the approval for planning permission in 1978 and after the modification of planning permission in 1985 and to also ascertain the current value as at the date of the surveys.

37. His report dated 9th March, 2007 annexed to his affidavit showed that the land was vacant and overgrown with "thick lastrajo" and located in a neighbourhood that, at the time of his assessment, was devoted to small industrial service companies in a "ribbon" fashion on the eastern and western side of the Galeota Road up to a depth of about 100 metres (325 feet). He reported that there were large expanses of vacant overgrown lands on either side of the Galeota Road travelling towards the Amoco Galeota operations and also to the rear of the "ribbon" development. Further, that there were no residential developments along the Galeota Road apart from a few squatters on State lands in the vicinity of Isthmus Road. In spite of the area being designated a "growth pole" in the National Physical Development Plan of 1986, the report showed too that no new housing development had taken place in Guayaguayare over the last ten years. Neither had the area benefitted very much from the Amoco and Petrotrin operations in terms of economic activity since these operations did not employ any great number of people and most of

the workers lived in the Guayaguyayare, Mayaro and Rio Claro districts. Most economic activity (shopping, leisure, administrative etc.) the report shows, was still concentrated in Mayaro some 20 km away.

38. In his Report, Mr. Kissoon gave the open market values of parcel B as at the date of purchase of the land by the Plaintiff in 1977, as at the date of approval in 1978, after the permission was modified in 1985 and the value as at the date of the survey, that is 2007. However, since this assessment concerns the value of the land as at 22nd August 1985, I directed my attention only to the values given by him for 1985.

39. Mr. Kissoon expressed the opinion that, as at 1985, the value of the unencumbered freehold interest in Parcel B with outline planning permission for industrial, commercial and residential use was $155,500 and with permission for agricultural use, $85,000. Based on Mr. Kisson's report, therefore, the difference between these values is $70,500.

40. In arriving at these values for 1985, Mr. Kisson utilised the direct comparative method of valuation and considered nine (9) comparable property transactions in the Mayaro area which were described in a Table annexed to his Report entitled "*Evidence for 1985 Valuation, Property Transaction Sheet*".

Evidence of Mr. Kisson under cross-examination

41. Under cross-examination Mr. Kissoon accepted that a parcel of land with Town and Country Planning approval would be more valuable than a parcel of land without such approval by virtue of obtaining such planning permission. The increase in value, he said, would depend on the use for which approval had been given. In respect of Parcel B, there were no lands in the immediate vicinity that were approved for residential development.

42. In coming to his opinion, Mr. Kissoon explained that he had used the comparative method of valuation but he did not know whether any of the properties shown on his 1985 Property Transaction Sheet had Town and Country planning approval but he knew the property listed as No. 3 thereon (from Ocean View Enterprises Ltd to Sandpiper Resorts Ltd) had been cut up into lots and put up for sale as a residential resort.

43. He identified that he had particularly relied on the transactions listed as Nos. 6, 7 and 8 on the Property Transaction Sheet which he thought to be closest in comparison. Although he did not know whether these lands had Town and Country approvals, he assumed they were unencumbered freehold interests without restrictions and he did not think the presence or absence of planning approval would have affected his valuation. He arrived at the values per acre by dividing the consideration on each transaction by the size of the parcels of land.

44. With respect to the residual method of valuation, he expressed his familiarity with this method which he described as a last resort method of valuation where there is no comparable evidence suitable for valuation of a site. According to him, it could also be used where a potential developer would like to test the viability of a development envisaged for a site. However, he said that he would not utilise the residual method as a first resort method because he could not find a demand for any development of that nature in that part of Mayaro. He agreed, however, that the residual method would be more appropriate when looking at a parcel of land yet to be developed, such as Parcel B. He also accepted that the use of the residual method was one method that could be used and it would take account of the use of the land and that the land would be developed in accordance with the planning approval. However, in the case of Parcel B, although he was aware that outline planning approval had been granted for commercial, residential and industrial development, he had not seen any final approval or a lotification plan with a survey.

45. With respect to the report of Mr. Weekes, he disagreed with him that there were not enough properties to make a comparison. He also stated that he would not have made the same assumptions as Mr. Weekes but he accepted that, using the residual method, Mr. Weekes' method appeared to be correct. He also indicated that he had not checked the arithmetic of Mr. Weekes' figures.

46. Upon re-examination, Mr. Kissoon indicated that without a survey plan for the subject parcel of land which would have given him a proper indication of what the development on the parcel of land would be, he would have had to make too many assumptions in

order to utilise the residual valuation method. Further, he found there were sufficient market transactions over the years that would have given him a good indication of what the values of land in that vicinity would be.

Evaluation of the Evidence

47. In my opinion, the valuation of Parcel B by Mr. Weekes based on the residual method of valuation is manifestly unreliable. In order to arrive at his valuation, he made certain assumptions based on information supplied by Mr. Rahaman. However, I did not have the benefit of any evidence to prove that, after the grant of the outline planning approval in 1977, Mr. Rahaman had taken any steps or made any concrete plans to develop Parcel B into residential, commercial or industrial lots for sale. Further, no evidence was led as to the number of residential units or commercial units that could be accommodated upon Parcel B or how much it would cost to carry out the construction of such units. All that I had were Mr. Weekes' unsubstantiated assertions that the Plaintiff's lotification for Section B was made up of 120 single-family residential lots at 5,500 sq. ft. each, 1 single-family residential lot of 10,500 sq. ft., 9 single-family residential lots at 6,000 sq. ft. each and 5 commercial lots. Mr. Weekes did not state, either in his Witness Statement or in his Report, what plans or documents he saw and/or relied upon to justify these assumptions. He then set out his computation in Appendix 1B of a gross development value of $26,470,000 from which he deducted outgoings of $7,178,750.00. However, he did not explain how he arrived at these figures. Accordingly, I am unable to accept his evidence that this method was the appropriate method for valuing this parcel of land.

48. Further, Mr. Weekes did not persuade me that he had done a thorough examination of comparable sales in the vicinity to be able to justify his decision not to use the direct comparison method. He gave no evidence to contradict the comparables used by Mr. Kissoon and he stated that he could not express an opinion as to the open market value of Parcel B without making the assumptions which he had. According to him, he was not asked to express that opinion.

49. As I indicated earlier in this Judgment, S. 12(1) of the LAA provides that the assessment of the compensation shall be made in accordance with the rules set out therein. However,

as Mr. Prescott submitted, an important distinction must be made in this case between the assessment of compensation where lands have been compulsorily acquired and the assessment of compensation in respect of lands where there has been a modification of planning permission. In the case of lands compulsorily acquired the owner of the lands is being deprived of ownership of his lands whereas in the case of a modification of planning permission, the owner remains seised and possessed of his lands. In this case, therefore, the Court is required to make an assessment of the value of the land, if sold in the open market by a willing seller with the outline approval for residential, commercial and industrial use and then make an assessment of the value of the land without such outline approval and with approval for agricultural use only. The difference between these two values would be the compensation payable to the Plaintiff.

50. On the evidence adduced by the Plaintiff, I am not satisfied that he has discharged the onus of proof that lay upon him to persuade me that the difference between the value of Parcel B with planning permission for residential, commercial and industrial use and the value with permission for agricultural use was in the amounts stated by Mr. Weekes and I decline to make an award in that amount.

51. On the other hand, I consider the evidence of Mr. Kissoon to be more credible. Notwithstanding the fact that he could not say whether the comparable parcels of land had outline planning permission for residential, commercial and industrial use, he said that he relied on the considerations of these actual transactions on the assumption that there were no restrictions imposed upon the lands. He was not shaken in cross-examination from his conviction that the direct comparison method was more appropriate than the residual valuation method. Further, his explanation of the circumstances in which the residual method of valuation would be appropriate was rational and credible. I accept his criticism that the employment of that method would require too many assumptions to be made and in the absence of any evidence from the Plaintiff to support the figures used by Mr. Weekes, I consider his criticism of that method to be fully justified.

52. In my opinion, therefore, the approach taken by Mr. Kissoon was more rational and logical and based on concrete factual evidence. Accordingly, I accept his evidence that the difference between the value of the land pre-modification and post-modification was $70,500.00 and I will award that amount to the Plaintiff.

The Unagreed Issues

53. I know turn to consider the Unagreed Issue raised by the Plaintiff as to whether or not he is also entitled to loss of profit and, if so, in what amount.

54. In support of his submission that he is also entitled to loss of profit Counsel for the Plaintiff cited the decision of the Court of Appeal in **F.A.M. Brunton and Others v. The Sub Intendant of Crown Lands**[8].

55. On the other hand, Counsel for the Defendant argued that the Plaintiff is not entitled to recover for loss of profit and he relied upon the case of **Collins v. Feltham Urban District Council**[9].

56. In **Brunton**, certain lands in Diego Martin, Trinidad were acquired under the Land Acquisition Ordinance by the Governor in Council for the public purpose of housing. A tribunal comprising of a Judge of the Supreme Court and two assessors was appointed to conduct an assessment of the compensation payable to the owners of the acquired lands. The tribunal visited the area on more than one occasion and had the benefit of expert evidence as to the utilisation of the area being acquired as well as contour and other plans. The appellants had argued before the tribunal that developer's profit was not a legitimate deduction to be made from the award but the tribunal's award took into account and deducted a developer's profit of 25%. Before the Court of Appeal, however, the appellants submitted that the tribunal adopted a wrong method of calculation as to developer's profit in arriving at the final award in respect of one particular parcel of land referred to as "Area A (ii)". The Court of Appeal found that "*when a tribunal is seeking*

[8] Civil Appeal No. 20 of 1963

[9] [1937] All ER 189

to ascertain the best market price for land in its undeveloped state.... it is imperative to work out the highest realisable value of the developed land and then make the appropriate deductions so as to arrive at what would thereby prove to be the highest offering price." In so doing, they approved the residual method of valuing the acquired land and endorsed the approach of the tribunal as "*well recognised ....in determining the compensation payable on the compulsory acquisition of land.*"

57. In my opinion, this case is distinguishable from the present case on several grounds:

(i) Firstly, the assessment which I am called to make here is not in respect of acquired lands but lands that have remained in the possession and ownership of the Plaintiff.

(ii) Secondly, I do not consider that the residual method of valuation is the appropriate method of determining the difference between the value of Parcel B with approvals and without approvals when there is evidence of comparable sales as demonstrated by the evidence of Mr. Kissoon.

(iii) Thirdly, the Plaintiff has not adduced cogent evidence to support an assessment of the highest realisable value based on the likely development of the land into residential, commercial and industrial lots.

58. In **Collins**, the owner of approximately 33 acres of building land, which was scheduled by the Defendant as an open space, sought compensation on the basis that he was entitled to recover (in addition to the ordinary market value of the land) the loss he sustained by being deprived of his anticipated profit in respect of houses he would have erected on the land. The owner gave evidence that he had previously developed another parcel of land comprising of 39 ½ acres of land and had sold 462 houses and that he had resolved to erect 271 houses on part of the 33-acre parcel of land. He also gave evidence that he had already arranged to sell 6 of the houses to be erected. The King's Bench Division held that the Plaintiff was only entitled to be paid in respect of the ordinary market value of the land "*being the amount which the land if sold in the open market by a willing seller might be expected to realise*" as provided by sect. 2 (2) of the Acquisition of Land

(Assessment of Compensation) Act 1919 and that would not include any compensation for the loss of profit expected to be made by its development as building land.

59. In my opinion, this case is not particularly helpful, despite the similarity between the facts in that case and the facts here. In that case, there was a change in the approved use of the land from building land to an open space and the language of the relevant section of the Act is in very similar, if not identical, terms as section 12 (1)(a) of the LAA. However, notwithstanding the evidence of the Plaintiff that he had already made plans to develop the lands and to erect houses thereon, the Court refused to include any compensation for loss of profit but, unfortunately, the Court did not provide any reasons for its decision.

60. In this case, the Plaintiff has not adduced any evidence to prove that he had made plans to develop Parcel B into residential, commercial and industrial lots. Further, the Plaintiff did not lead any evidence to support the likely cost of pursuing such a development and how he expected to realise on the sale of the lots. Accordingly, the figures contained in Mr. Weekes' valuation and in Mr. Roopchan's report were, to my mind, speculative and unsubstantiated. In the circumstances, on the basis of the evidence adduced before me, I am of the view that the recovery of compensation by the Plaintiff for loss of profit would be too remote and I make no such award.

Interest

61. The Plaintiff has sought an award of interest at the rate of 9% per annum from August 1985 to the date of the award. The Defendant, on the other hand, has submitted that the appropriate rate of interest should be 6% per annum from the 22nd August 1985 to the date of the award.

62. Section 20 (1) of the LAA provides that "*compensation payable in respect of land under this Act shall include interest at the rate of nine per cent per annum or at such other rate as the Minister to whom responsibility for finance is assigned may, from time to time, determine by Order.*"

63. In my opinion, although the TCPA contains no express provision for the payment of interest on compensation, the effect of section 26 (1) of that Act is to direct the Court to assess the compensation in accordance with the provisions of the LAA. Therefore, when Section 20(1) of the LAA, which also falls within Part III of the Act that addresses "Compensation", expressly mandates the inclusion of interest in "the compensation payable in respect of land under this Act", that provision also dictates that the award of compensation made herein should include interest at the rate of 9% per cent per annum. Accordingly, I will award the Plaintiff interest on the compensation of $70,500.00 from the 22nd August, 1985 to the date of this award.

Costs

64. This matter was commenced in 1988 when the **Rules of the Supreme Court** 1975 were still in force and was never converted to the **Civil Proceedings Rules** 1998. Accordingly, I am of the view that the appropriate order should be that the Defendants do pay to the Plaintiff the costs of the assessment, certified fit for Counsel, such costs to be taxed, in default of agreement.

Dated this 10th day of July, 2012

André des Vignes
Judge