THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV No. 2011-03854

BETWEEN

WATER AND SEWERAGE AUTHORITY

Claimant

AND

THE MAYOR, ALDERMEN, COUNCILLORS AND CITIZENS OF THE CITY OF PORT OF SPAIN

Defendant

Before The Hon. Madam Justice C. Gobin
Appearances:
Mr. S Jairam SC and Mr. L. Lalla instructed by
Ms. N. Alfonso for the Claimant
Mr. J. Jeremie SC and Mr. K. Garcia instructed by
Ms. K. Nanhu for the Defendant

JUDGMENT

1. This dispute arose out of rival claims by the Water and Sewerage Authority (WASA) and the Mayor/Aldermen, Councillors and Citizens of the Port of Spain Corporation to a parcel of land situate opposite The Falls, West Mall comprising 23 acres (the subject parcel).

2. The claimant claimed ownership solely by virtue of a statutory vesting of title under S. 11 of the WASA Act Ch.54:40 (the Act) which came into effect on the 1st September 1965.

3. Section 11 upon which WASA's case was based provided -

(i) Upon the commencement of this Act -

> (a) All land and other property of every kind, including things in action, vested or deemed to be vested immediately before the commencement of this Part in -
>
> (iii) the Port of Spain Corporation under the Municipal **Corporations Act or by any other right or title and relating to waterworks** (emphasis added), (within the meaning of section 40) or the existing sewerage system.

is hereby vested in the Authority.

4. Quite obviously, the Act itself did not identify any parcel of land it purported to vest by reference to any specified or ascertainable boundaries. It vested lands belonging to the Port of Spain Corporation "relating to waterworks". The language is so vague that it is surprising that it has not resulted in more litigation of this kind.

5. The defendant's position is that the subject parcel has always been and continues to form part of its property formerly known as Cocorite Farms, of which 33 acres including the subject lands, remain under its ownership possession and control. It accepts that prior to the enactment of the Act, there was a pumping station and a pump house and indeed waterworks were carried out on a small area of the Cocorite Farm. It strenuously disputed that the effect of S.11 was that claimed by WASA, and denied that the 23 acre parcel comprising the subject lands was thereby vested at 1st September 1965 in the claimant as "lands relating to waterworks".

6. The relevant definition of "waterworks" is to be found in the interpretation section of the Port of Spain Waterworks Ordinance No.13 of 1904. It provided –

> "Waterworks" means all reservoirs, dams, filter-beds, weirs, tanks, wells, cisterns, tunnels, conduits, aqueducts, pipes, fountains, sluices, valves, pumps, steam engines and all other structures and appliances used or constructed for the storage, conveyance, supply, measurement or regulation of water, which are and shall be so used or have been constructed or are to be constructed by or on behalf of the Engineer of the Water Authority for the supply of water to the Port-of-Spain Waterworks district.

7. If this definition assisted with the construction of "waterworks" it was far from helpful on the issue of what was meant by "lands relating to" waterworks. How much land did this provision vest, what was the extent of such lands especially where areas had not been specifically marked out before the operative date. These were the questions raised in this case and which the claimant was required to answer.

8. In its attempt to do so, the claimant started off with the hurdle posed by the vagueness of the language of the provision itself. Its case was not helped by the fact that both in the claim form as well as in the amended statement of case, the lands alleged vested were identified solely by reference to a plan drawn by licensed surveyor, Mr. Colvin Blaize. Copies were attached to both documents. This was a claim to a specific parcel of land shown the Blaize plan drawn in 2011, but based on a statutory provision which was silent as to the boundaries of what actually vested.

9. On the pleadings therefore, the claimant set itself the task of essentially proving the area shown on the plan produced by Mr. Blaize dated the 11th April 2011 is what statutorily vested on the 1st September 1965 as "lands relating to waterworks". The claimant did not call Mr. Blaize as a witness at the trial.

10. In my view Mr. Blaize was a necessary witness. His evidence would have been required to explain how it was, after an alleged statutory vesting in 1965, with no description of land on the ground and with no subsequent definition or delineation of the area vested between 1965 to 2010, for the first time some almost 46 years later, he came to define the specific subject parcel in respect of which this claim was brought.

11. Indeed, at paragraph 12 of the amended statement of case, WASA stated that in April 2011 it retained the professional services of Mr. Blaize for the purpose of **identifying and surveying the boundaries of the said lands on which the Cocorite Farrel Well Field is located** (emphasis added). This would suggest or amount to an admission that prior to that time, the boundaries had not been ascertained. Mr. Blaize produced a report dated 11th April, 2011 at the end of this assignment as well as the plan. Because he was not called as a witness neither was properly produced in evidence.

12. Given what was the defendant's response to the claim of the statutory vesting, the need for Mr. Blaize's evidence was even more critical. It at all times

took issue with the amount of land claimed by the claimant. It specifically pleaded that "land related to waterworks" did not mean the whole and or all or the entire parcel of the subject lands (3(b) amended defence). It denied there were ever 35 wells on the subject parcel.

13. In the course of the management of the case too, the need for Mr. Blaize's evidence must have become apparent. His plan was not an agreed document, neither was his report. When the parties jointly submitted a list of unagreed facts on the 3rd April 2012, the first on the list of 17 such items was "the area and boundaries of the said lands". The second was "whether the defendant operated wells in the well field before the 1st September 1965 and if so the number of wells in existence on the said lands on the 1st September 1965". The third was "whether the said lands were part of the waterworks operated by the defendant before the 1st September 1965". These three items raised issues which further required the production of Mr. Blaize's plan (which according to the attachment to the amended statement of case purported not only to show an area, but the location of several wells), and his report and evidence as to how he came to indicate the particular boundaries.

14. In the absence of Mr. Blaize, the claimant was left to rely on the evidence of two witnesses, Mr. Leon Toppin and Mr. Wayne Clement as to the general location of the alleged well field. While I accept that both may have visited, though infrequently, the site of certain wells on the Cocorite Farm lands of the defendant,

in the course of their employment between 1972/1973 respectively when they began with WASA until to the early 1980's, they both referred to and relied on Mr. Blaize's plan to describe the precise location and extent of the lands claimed.

15. The references by these witnesses to the plan in their respective witness statements did not make the plan admissible other than as a plan produced by Mr. Blaize. They did not render Mr. Blaize's otherwise inadmissible plan, admissible as to the truth of its contents and in particular as to his findings on the location of the boundaries and the alleged location of the wells.

16. For the above reasons I consider the omission of the claimant to call Mr. Blaize or to lead admissible evidence of the plan including the location of the alleged wells and the well field to have been a fatal omission which went to the root of its case. At the close of it there was no evidence to link the subject parcel and the pleadings. This is however not the sole ground for the failure of the claimant's case.

17. WASA said the 23 acres claimed were "lands relating to waterworks" at the operative date of the Act. It said so on the basis of the report of Major A.J.A. Sutton, Government Geologist entitled "The Report on Water Supply of Trinidad", printed and published by the Government Printer of Trinidad and Tobago in 1950. As to the value of the Sutton Report, I am prepared to accept its contents as evidence contained in a public document produced by an official in the course of

his employment. It established that as at the date of the report in (1950), the defendant's predecessor, the Port of Spain Council, was one of several public authorities responsible for water supply and distribution in Trinidad and Tobago and within the Port of Spain city. The Sutton Report confirms that the Port of Spain Council had, at the time of its publication, its own sources of wells and dams.

18. I accept too, from the report, that at about 1950, on the Cocorite Farm area, which it is agreed was owned by the defendant, there was a wells field with some 35 wells. The water from these wells was pooled together before it was pumped into the mains. The Sutton Report does not identify the location or the extent of the land on which these wells were located. It was therefore unhelpful in establishing a nexus between the historical facts which I accept as to the existence of the well field and the specific area claimed at the operative date.

19. The defendant does not deny that there was a pumping station and pumphouse on part of its Cocorite Farm lands for some time. The site of the derelict structure has been shown on a map which it produced. Indeed it is clear from its own records that the defendant received income from waterworks on its Cocorite Farm lands up to 1965 when control of its waterworks functions were transferred by statute to WASA. That there were waterworks in operation at the relevant time was therefore not in dispute. But at all times the defendant put the claimant to proof of the existence, location and operation of the 35 wells on the

basis of which its claim to the particular acreage of the subject lands is made and I have found that the claimant failed to discharge the evidential burden in that regard.

20. Moreover, the claimant has produced no evidence that between 1950 and September 1965 all or any of the wells referred to in the Sutton Report in fact remained operational. Its witnesses have relied on what they call their "institutional understanding" of what obtained at the time and prior to their employment which began for both, in the early 1970's. I have attached little weight to their evidence on this issue. The absence of more cogent evidence on this aspect of the matter has not been explained.

21. In 1965 WASA was a new statutory creature, assuming responsibility for an important public function, which included the supply and distribution of water to the public. Surely one of its first undertakings must have been to ascertain what waterworks existed at the time and what property was statutorily vested in it. If not in the first year of its existence, at least in the early years following its assumption of responsibility, surely some note however basic must have been made or some information gathered as to what it had inherited by way of plant and resources and capacity.

22. The failure to produce or to attempt to explain the absence of records as to what actually came under its control from the defendant has not impressed me. The claimant's reliance on the Sutton Report which predated its own creation and

assumption of statutory duty by some fifteen years resulted in a case that was tenuous, at best.

23. Correspondence produced by the defendant clearly established that by letter dated 26th April 1968 WASA was requesting the defendant's City Engineer to supply a plan of the area of Cocorite Farm "assigned to it". This appears to confirm that there was at that time no clearly defined area over which WASA assumed control by reason of S.11. Indeed if there were in fact a "well field" on which were located 35 operational wells and a pumphouse occupying an identifiable 23 acres out of 33 acres of the Cocorite Farm, then such a request would surely have been unnecessary. If WASA inherited a well field which was producing in 1965 approximately three and a quarter million gallons of water a day (para.52 Sutton Report), then surely there must have been some record of the levels of production, some logs, readings, reports on levels of contamination, diagrams, even photographs, available for production in evidence. The claimant has produced nothing. Even if I were to make allowances for simply bad record keeping by public authorities, the complete absence of anything at all has left me unwilling to infer that activity on the site in 1965 was the same as or anywhere near what it was in 1950.

24. When in its response to WASA's request for a plan of what was "assigned", the defendant responded indicating that it would be "inadvisable to release the information", WASA appears to have done nothing to insist as the new

owner on having such a plan at that time or any time since. WASA now claims some 46 years later in this action, to be able to identify through research in 2011, the area of lands vested and on the basis of no new information.

25. I find therefore that the claimant's almost exclusive reliance on the contents of the Sutton Report to establish its case was misplaced. There was no admissible and/or cogent evidence that the 35 wells or waterworks referred to in the Sutton Report were located on the subject lands or that whereever they may have been located, they remained actively part of the defendant's waterworks. The presence of installations such as the derelict pumping station and or pumphouse which the defendant accepts were located on some small portion of the lands, do not support a case for the claimant's title to 23 acres of land, far less the specific parcel claimed.

26. In a further attempt to define and identify the subject lands, the claimant sort to rely on the fact that the defendant's predecessor had in 1949 passed the Public Health (Cocorite Water Supply) Bye Laws Ch.12 No.4 in 1949 (which were updated from time to time) to protect the water supply in the underlying area described in the schedule thereto. A plan of the protected area was annexed to the bye laws. As I understand it, the claimant's case on this is that because as the bye laws indicate, that for public health purposes, the area was thought by the defendant's predecessors in title to require statutory protection against pollution,

that fact rendered the entire area shown, including the subject land, "lands relating to waterworks".

27. I reject this argument. The applicable definition of waterworks was set out at paragraph 6 above. I accept the submission of the defendant that the definition contemplates man-made or constructed "works". It does not include naturally occuring resources under the surface of the soil. The fact that an area was defined for protection even in bye-laws did not make the soil of the entire area "land relating to waterworks". Had it been otherwise, the claimant would have claimed all the defendant's Cocorite Farm lands, not just 23 of the 33 acres. Indeed in its closing submissions WASA acknowledged that the remaining 10 acres of Cocorite farms "may belong to the defendant".

28. What is clear from the Public Health bye-laws is that they simply imposed conditions and sought to regulate the erection of new buildings, sewerage systems, stables, piggeries, construction of cesspits and the carrying out of foul water on an area that extends beyond the area claimed by WASA and which, from the schedule, I believe extended outside of the limits of the Cocorite Farm lands. I find it significant that the bye-laws did not prohibit building and construction on the protected area.

29. In an attempt to further justify its claim to the specific subject parcel, which is free of buildings at the moment, WASA relied on the fact that it required

access and control of the acquifer underlying the subject lands on which it claimed these 35 wells referred to in the Sutton Report were originally drilled. The acquifer which is known as the Diego Martin Gravels land extends from Cocorite to River Estate. I understood the claimant to be saying that the subject lands "related to waterworks" and were thus vested because the underlying acquifer is part of the "waterworks".

30. The Waterworks and Water Conservation Ordinance Ch.54:41 1945 which is an act in *pari materia* with and which predates the WASA Act defines both "waterworks" and "acquifers" distinctly. The powers of the Minister or "competent authority" which are set out at S. 3 (1) (a), (b) and (c) relate to the "construction and carrying out" of "waterworks". In my opinion the language lends support to my finding and acceptance of the defendant's submissions that "waterworks" contemplate man made construction and systems which do not include natural water bearing formations under the soil. I therefore reject the submission that the need to protect the underlying acquifer and its mere presence underneath rendered the subject parcel lands "related to waterworks".

,

31. But the matter does not end there. Since the defendant carried out waterworks until 1965, and it is agreed that the pumphouse was in operation at the "vesting date" then I have no doubt that some interest in some part of the defendant's lands vested by virtue of S. 11 of the Act. The question which remained unresolved even at the end of the claimant's case was what precisely

vested. Whatever the extent of the land area vested and without definitively deciding that issue, I accept the submissions of the defendant as to the applicability of the principle of law that since the Act here vested property in a public authority (WASA), it operated so as to vest only such interest in the property as was necessary for the discharge of WASA's statutory functions (***Coverdale v Charlton (1878) 4 QBD 104***). There was no vesting of an interest in real property per se. In other words as I understand it, lands having been vest as "lands relating to waterworks" could not simply be sold to raise revenue, for example. Further, I accept that as a matter of law, WASA's interest or such as was vested would cease to exist if and when its statutory functions in relation to those lands came to an end.

32. A factual issue I have had to determine then is whether WASA's statutory functions came to an end. To recap, WASA's case is that out of the defendant's 33 acres Cocorite Farm, the subject lands comprising 23 acres vested in 1965. It claims that since then it has been the "paper title holder deemed to be in possession". It has admitted however that since in the early 1980's, supply and distribution from the field was discontinued, albeit it claims only temporarily and deliberately as part of a plan. It explained the reason for this as it needed to show it continued in possession of the alleged vested parcel, so as to resist the defendant's claim of adverse possession.

33. To explain its absence from the subject parcel from the early 1980's WASA claimed that a decision was taken to suspend works because of over

abstraction to allow the acquifer underlying the well field to recharge. This was necessary because, it being an open-ended acquifer that opens into the sea, the infiltration of saltwater had contaminated it. What was required was a period of suspension of operations, to allow for the recharging of the acquifer and the dilution of the salt water infiltration. For WASA, Mr. Toppin said two monitoring wells were set up for monitoring the recharge. The location of these WRA (1) and WRA (2) was not identified. If WASA retained a presence on the subject lands through the maintenance of these two wells, the exact location has not been established. Indeed it has not been established by reliable evidence, that these monitoring wells are on the "subject parcel".

34. The defendant on the other hand has said that WASA after 1965 maintained some operations, which came to a halt in the early 1980's when it abandoned whatever works there were at that time entirely. Those works which it carried on until the 1980's were confined to the area of the pumphouse and extraction from a few remaining wells. Thereafter the pumphouse and pumping station was left to fall into ruin and it maintained no further interest in any part of the Cocorite Farm lands whatsoever. The defendant's case was that if any lands vested, it was a small area confined to that around the pumphouse such as WASA controlled in relation to the defendant's installations at King George V Park and The Queen's Park Savannah but that even that limited area was abandoned for well over 30 years.

35. Was this a case of abandonment or did WASA indeed simply suspend operations for a legitimate purpose. I find again that the absence of cogent evidence on this issue has caused me to reject WASA's claim. It has provided no record or documentary evidence of what must have been an important decision to suspend operations from wells which were in 1950 producing three and a quarter million gallons per day. Surely WASA must have taken a decision based on technical and or scientific data obtained and recorded somewhere, and based on the assured availability of supply to replace what in the 1950's appeared in Major Sutton's time to be the main source of supply to the Port of Spain area. I have not been impressed that WASA sought to provide evidence of this decision solely through *viva voce* evidence of Messrs. Toppin and Clement who did not seem to have personal knowledge of it (the decision) or the reasons for it. I attach no weight to their evidence on this aspect of the matter.

36. If a decision of this magnitude had been taken I would expect that WASA through its Board, or the Water Resources Agency must have recorded it officially somewhere. Nothing has been produced by way of documentary support for the establishment of and Monitoring of WRA (1) and WRA (2), the alleged observation wells which on the claimant's evidence is the only presence it maintained on the subject lands since the early 1980's through visits to them from time to time by employees. No records, readings, analyses have been submitted to support its alleged activity in relation to the subject lands or any part of the Farrell Well Field for the past 30 years. On what basis then did WASA decide to resume operations.

What data satisfied it that the acquifer had been sufficiently recharged by 2010. If indeed these wells are located on any part of the defendant's lands, then occasional visits to them over the 30 years can hardly amount to continued acts of possession and control of 23 acres of land.

37. If the underlying acquifer, the Diego Martin gravels which extends from the coast to River Estate was to be recharged through direct infiltration from rainfall, it is surprising that as the claimant has said the Valsayn Well Field took 8 to 9 years, when an area in Diego Martin or Cocorite would require more than 30 years. The Court is well familiar with the level of rainfall that occurs in the Diego Martin area. If the claimant's case is that the recharging of the acquifer rests on infiltration on this particular 23 acre parcel of land (which would be hard to accept in any case), I find there is no evidence to support this.

38. I do not believe that any decision was taken by WASA to suspend operations. I am more inclined to believe from WASA's conduct and from the lack of documentary evidence to which I have alluded before, that it had indeed abandoned any operations which remained of the Cocorite Farm Waterworks since the early 1980's, with no intention to return thereto.

39. Perhaps the most significant aspect of WASA's conduct in relation to the subject lands which supports my finding of abandonment was its deafening silence or claim to ownership of the lands, when in or about 2002, a public debate was

raging about the Mayor's plans to hand over 13 acres or so of the subject lands to the Ministry of Education for the erection of two schools, and while negotiations with the Diego Martin Regional Corporation for the construction of an office complex were taking place between the defendant and that authority.

40. These structures were to be erected on the very area that WASA now claims it requires to remain clear of structures and sources of contamination. WASA voiced no objections to plans which had they proceeded, would have had the effect of defeating the entire purpose of the alleged suspension for 30 years of its water abstraction on the subject parcel. This ommission to act or to raise its voice has convinced me that WASA had no intention to resume operations at all, and that the whole business of a decision to suspend of operations to recharge the acquifer was not to be accepted. Its lack of response I take to indicate its acceptance that it had no interest in the matter. It had abandoned the field and whatever vested in 1965 had ceased to exist.

41. In coming to the conclusion that any interest ceased to exist I accept the defendant's submission that the provisions of S. 11 of the Act are confiscatory in character. Indeed it has not been suggested that the defendant's ownership of Cocorite Farms arose only by reason of its waterworks functions by some similar vesting arrangment. Rather it appears to have been accepted that the Cocorite Farm lands belonged to the defendant otherwise and that in addition to waterworks it conducted other activities on what was regarded as its lands. By virtue of S.11

the defendant was deprived of its interest in some part of its lands without compensation. In limiting the extent of the interest that was granted by S. 11 I bear in mind that the defendant was not a corporation rendered defunct by the transfer of the waterworks to WASA under the provisions of the Act. It continued to exist and carry out its remaining and important public duties. Its right to hold its real property was not affected. The fact that it was a local authority as opposed to a private individual made no difference (see **Ministry of Health v Stafford Corporation 1952 3AER 386 at p 393 (F)**) Since it was deprived for whatever period of some interest in its property, without compensation, once WASA abandoned those lands, and the deprivation for the public purpose could no longer be justified, WASA became disentitled to any interest in it.

42. But if I am wrong on this, there is another aspect to the defendant's case. It claimed to have acquired a possessory title to whatever lands were vested in WASA. The defendant submitted that the statutory vesting notwithstanding, it remained in undisturbed possession and control of its Cocorite Farm lands after the 1st September 1965 allowing access to the claimant for its visits from time to time and for access to whatever waterworks remained until 1980.

43. On the evidence I find that the defendant remained in possession and control of the Cocorite Farm lands including the subject lands, leasing part of it to Trinidad and Tobago Electricity Commission (T&TEC), engaging in very high profile and much publicised negotiations with the Diego Martin Regional

Corporation and the Ministry of Education. I accept the evidence of the former Mayor of Port of Spain, Mr. Murchison Brown, as to the activities which the defendant continued to carry out on the Cocorite Farm lands. I find that the defendant took steps to evict squatters from the subject parcel, with the requisite animus as owners of it and it remained in continuous possession of the entire parcel, while time began to run against WASA from the time of its abandonment. If indeed WASA remained a "paper title holder" (and I do not believe it did) after its statutory functions ceased, then that paper title extinguished sixteen years from the abandonment in the early 1980's and well before 2010.

44. In the circumstances, the entry by the claimant on the subject lands in or about 2010 was illegal.

(1) The claimant's case is dismissed with costs. I shall hear submissions on the issue and quantum of costs.

(2) The Court declares that the claimant having abandoned all waterworks activities on the defendant's Cocorite Farm lands or what was formerly known as the Cocorite Farrel Well Field in or about the early 1980's, any interest which vested in it or any part thereof by virtue of S.11 of the WASA Act Ch. 54:40 ceased to exist thereafter.

(3) There shall be judgment for the defendant on the counterclaim.

(4) The Court holds that at least since the early 1980's and continuing until the institution of this action, the defendant has been in continuous and undisturbed possession of 33 acres of lands known as the Cocorite Farm including the lands described in the statement of case and claimed by the claimant in this action and the defendant has acquired

a possessory title to any or such part of it that may have statutorily vested in the claimant by virtue of S.11 of the WASA Act Ch. 54:40.

Dated this 11th day of January 2013

CAROL GOBIN
JUDGE