

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

H.C.A. NO: 941 of 2000

**IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO BEING THE SCHEDULE OF THE
CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO ACT 1976**

And

**IN THE MATTER OF AN APPLICATION BY MARILYN LEE FOR REDRESS IN PURSUANCE OF SECTION
14 OF THE SAID CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR A
CONTRAVENTION OF SECTIONS 4 AND 5 OF THE SAID CONSTITUTION IN RELATION TO THE
APPLICANT**

Between

MARILYN LEE

Applicant

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Respondent

Before the Honourable Mr. Justice David C Harris

Appearances:

Mr. Sunil Gopaul-Gosine **for the Applicant**

Ms. Cherisse M. Nixon **for the Respondent**

JUDGMENT

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INTRODUCTION

1. The Applicant filed a Constitutional Motion on 26th July 2000 for relief arising out of the demolition of her dwelling house at Paltoo Trace, South Oropouche, Trinidad, on 20th March 2000. She seeks in the main the following relief:
 - (a) A declaration that the action and/or conduct of the police in allowing and/or permitting and/or assisting and/or supervising in the breaking down of the Applicant's home located at Paltoo Trace, South Oropouche on or about the 20th day of May 2000 contravened the Applicant's right to the use and enjoyment of property and the right not to be deprived thereof except by due process of law and the protection of the law as guaranteed by Sections 4(a) and 4(b) of the Constitution of Trinidad and Tobago.
 - (b) Further an Order that damages and/or monetary compensation be assessed by a Master in Chambers and paid by the State to the Applicant in respect of the said contravention of the Applicant's fundamental rights.
2. In support of the Applicant's case, are the affidavits of the Applicant herself ("**Marilyn Lee**") and that of her niece, Janelle Mechelle Lee ("**Ms. Lee**"), and a supplemental affidavit filed on behalf of the Applicant.
3. The Respondent filed the affidavits of Cecil Carrington and Kelvin Kennedy. In addition, a copy of the Order of the Court dated 25th November 1993 and a copy of the Writ of Possession dated 18th September 1997 in favour of Mrs. Myrtle Partap were filed by the Applicant on 27th July 2011. A Writ of Possession, Seal and a Notice, dated 17th September 1999¹ are also before this Court.

THE CASE FOR THE APPLICANT².

4. The Applicant's case against the Respondent is that in or around the year 1990 on the invitation of her mother she entered onto a small plot of land next to that of her mother, that had been hitherto occupied and cultivated by her said mother and her grandmother. The Applicant, on the invitation of her mother, built a small two bedroom house, with a porch, kitchen and a living room. The building was constructed in box board and plywood, glass louvre windows and a galvanize roof. The Applicant testified that she was a squatter.

¹ The Notice indicated that Mrs. Myrtle Partap would point out the lands in question to the Deputy Marshall.

² See the written submissions of counsel for the Applicant.

5. On The 20th of May 2000, whilst the Applicant was at work, one Mrs Myrtle Partap, along with a Court Marshall armed with a court order, several police officers and a demolition crew, ostensibly on the basis of the said order, demolished hers and some 18 other houses in the area. Mrs Partap was the registered owner of the lands, the subject of the Court Order, and claimed it from the occupiers. The Applicant alleges that she was not aware of any court order obtained against her prior to this day. Her case is that her niece, one Janelle Mechelle Lee ("**Ms Lee**") was in the house at the time and remaining in the house to dissuade the demolition crew from effecting their intentions, when the police forced their way into the house arrested and hand cuffed her and subsequently prosecuted her (successfully), for obstructing the police in the execution of their duty, resisting arrest and assaulting a Police officer. The case for the Applicant is that the removal and subsequent arrest of her niece by the police present at her dwelling house, '*lent ostensible legitimacy to the unlawful action of the demolition crew and Mrs. Myrtle Partap*'³ (See Applicant's Affidavit at paragraph 17). The Applicant is asserting that there was no breach of the peace on the scene at the time as contended by the respondent, to merit the police's interference and that, as the Applicant alleges, in forcibly entering the dwelling house, the police acted outside of their remit.

6. The Applicant, citing primarily the Privy Council appeal No. 54 of 2000, Thakur Persad Jaroo v The Attorney General of Trinidad and Tobago, further contends that she does not have to show ownership of the property (house and land) to enforce her Constitutional rights, but all she need show is that she was in possession of the said property at the material time⁴. She contends that as a consequence, the State had infringed her Constitutional rights and enjoyment of her property and to the protection of the law as set out in sections 4(a) and 4(b) of the Constitution of Trinidad and Tobago.

CASE FOR THE RESPONDENT⁵

7. The Respondent, through the affidavits of then Assistant Commissioner of Police, South, Carrington and police officer Kennedy contend that they were visited by Mrs. Partap who was in possession of a Court Order and a Writ of Possession (along with the 'notice' are collectively referred to as the "Court order"). She required police assistance to execute the writ of possession. The police's presence at the Applicant's dwelling was only to ensure that there was no breach of the peace.

³ See para 17 of the Applicant affidavit.

⁴ See also Costello v Chief Constable of Derbyshire Constabulary [2001] 1 WLR 1437; Webb v Chief Constable of Merseyside Police [2001] QB 427.

⁵ See the written submissions for the Respondent.

8. The Respondent contends that the Applicant's Motion is based on on the unlawfulness of the destruction of her dwelling place. The legal and evidential burden rests with the Applicant to establish that her dwelling was demolished wrongfully which, in the Respondent's view, is the material fact in issue. If the structure was broken down lawfully, *then no taint* can be attached to the police's attendance at the scene of the demolition.
9. The evidence which the Applicant puts forward in support of that allegation of unlawfulness can be found in para 13 of her affidavit. She said there, that since she had built her dwelling house, she has not received any notice or other document contesting her occupation of the land nor had there been any court order issued against her. She, however, does not claim any legitimate right to the land. Further, in her supplemental affidavit, she admits that she has only occupied the land for 11 years, which the Respondent points out is insufficient to establish any *adverse possessory rights*. At para 3 of the Applicants supplemental affidavit filed on the 15th August 2001, she states clearly that she was a squatter.
10. The Respondent is asking the court to accept that the Applicant has produced no evidence which would substantiate her claim that the destruction of her property was unlawful, other than pleading her ignorance of any action, legal or otherwise, for possession of the land on which she resided. Neither has she exhibited any evidence that Mrs. Partap was not the lawful owner of the lands.
11. The Respondent noted that Ms Lee remained on the premises despite being asked to leave, so as to deter the Marshalls from demolishing the house. There is no dispute that the Marshal and the demolition crew were there to demolish the house. The Applicant, contends the Respondent, produces no evidence which would support her claim that, but for the police intervention in that respect, her dwelling would not have been broken down.
12. The evidence adduced by the Respondent (at paragraph 3 of Carrington's affidavit) is that Mrs. Myrtle Partap visited the San Fernando Police Administration Building in May 2000, in possession of a court order and a writ of possession. She showed both to Assistant Police Commissioner Carrington and requested and paid for the police to be present when the writ was executed for which she paid.
13. The respondent contends that the effect of the writ of possession is that, the Marshall in possession of such a writ is entitled to turn out any who she finds on the land described in it (***R v Wandsworth County Court ex parte Wandsworth London Borough Council*** [1975] 1 WLR 1314 at page 1318D). Lord Widgery C.J. (as he then was) in ***Wandsworth County Court*** also notes, citing Lord Denning in an earlier case, at

page 1318H that the Court Order in favour of recovery of land 'can be enforced by a writ of possession immediately. It is the authority under which any one who is squatting on the premises can be turned out at once. There is no provision for giving any time'.

14. In this instant case, in 1999 the writ sets out the following properties:

(a) *All and Singular that parcel of land bounded on the North, South, East and West by other lands of the Plaintiffs and numbered "1" on the plan marked "MP1" and being part of the Belle Vue Estate Estate, South Oropouche and hereinafter called the said plan exhibited with the affidavit of Myrtle Partap and filed in these proceedings in support of the Plaintiffs' Order 94 Summons **as against the Defendant KENNEDY CORNWALL** of South Oropouche, Partap Estate;*

(b) *All and Singular the parcel of land bounded on the North, South, East and West by other lands of the Plaintiffs and numbered 3 on the said Plan and being part of Belle Vue Estate, South Oropouche, as against **the Defendant SELWYN BIBBY**;*

15. The Respondent submits that it has never been a part of the Applicant's case that her dwelling was *not* on the lands described in the writ. It was, submits the respondent, incumbent upon the Applicant to establish her property was not on the described lands, as it was her case that the demolition was unlawful. Had the Applicant established that it was not, it would be compelling evidence of the illegitimacy of her dwelling's destruction. The Respondent contends that this situation is not one in which a rebuttable presumption arises as a result of the Applicant's allegations.

16. As such, contends counsel for the Respondent, the existence of a valid order, and writ, negates the allegation of unlawfulness, surrounding the demolition of the Applicants dwelling house.

17. The Respondent does not stop there. They submit that further to the arguments above or indeed, alternatively; as the ostensible owner of the land on which the Applicant erected her structure, Mrs. Partap was entitled to, without resorting to the Court, remove any trespassers from her property. It is submitted by counsel that the local authorities of Vashti Sampson and others v The National Housing Authority Civ App No. 96 of 2003) and **Shyroon Mohammed** HCA No. 1128 of 1980, set out the law on this point. In the **Mohammed case**, Mr. Justice Deyalsingh at pages 6-7, cites Lord Denning in an earlier judgment on the remedy of self-help,

The owner is not obliged to go to courts to obtain possession. He is entitled, if he so desires, to take the remedy into his own hands. He can go in himself and turn them out without the aid of the courts of law. This is not a course to be recommended because of the disturbance which might follow.

18. Counsel for the Respondent submits that this dicta was approved by the Court of Appeal in the Vashti **Sampson case**.
19. In such a circumstance of self-help, submits the Respondent, the issue of State involvement arises. The presence of the Court Marshall and the police was brought about by the existence of the Court Order and the Writ of Possession. The notice attached to the Writ indicated that it would be Mrs. Partap who would point out the lands in question. It is the Marshall's duty to ensure that the Writ is executed. In such an instance where the owner of the land is mandated to indicate which structures are to go, the state agents involved would arguably be indemnified by Mrs. Partap, should her actions be proved to ultimately, have been unlawful.
20. The Respondent submits that in any event, Mrs. Partap was entitled to recover possession of her land and further, that the Applicant has neither pleaded nor has she adduced any evidence to demonstrate that her dwelling was not on Mrs. Partap's land. They claim that as it was the Applicant who claimed the entry and demolition was unlawful, it is for her to prove its unlawfulness.
21. The Respondent contends that Mrs. Partap requested that the police attend the demolition of the squatter's houses on her land. Their their presence and involvement was in fact restricted to a limited purview, namely ensuring that there were no breaches of the peace.
22. It can be implied from the affidavit of Janelle Lee, that the Applicant is asserting that there was no such breach of the peace to merit the police's interference and that, as she alleges, in forcibly entering the dwelling, the police acted outside of their remit.
23. Janelle Lee's evidence is that the Marshall identified Mrs. Partap to her and informed her that they were there to demolish the Applicant's dwelling and that she had to vacate. Ms. Lee refused. She also states, that the police also requested that she leave the premises. From Janelle Lee's account, she received more than one request to leave the property from those with the apparent authority to make this demand.
24. The upshot of Janelle Lee's evidence is that the police only intervened after she refused to obey the Marshall's instruction that she vacate the property.
25. In **Mcleod v United Kingdom** [1999] 1 FCR 193 (at paragraph 24), by the European Court of Human Rights ('the European Court'), citing from the case of **R v Howell** [1982] 1 QB 416 at 426 noted that

...there is a breach of the peace whenever harm is actually done or is likely to be done to a person or in his presence to his property or a person is in fear of being harmed through an assault, an affray, a riot, unlawful assembly or other disturbance.

26. The European Court also cites from the case of *R v Chief Constable of Devon and Cornwall ex parte Central Electricity Generating Board* [1995] 3 All ER 124 at 131 which states

The conduct in question does not itself have to be disorderly or a breach of the criminal law. It is sufficient if its natural consequence would, if persisted in, be to provoke others to violence, and to some actual danger to the peace is established.

27. The case of **Mcleod** centred upon the result of lengthy and combative divorce proceedings between a husband and wife. The ex-husband, belabouring under a mistaken presumption, believed that he could go to the former matrimonial home to collect his possessions. Given the volatile nature of the couple's legal proceedings, Mr. Mcleod's solicitors arranged for police officers to be present. When they arrived at the house only Mrs. Mcleod's aged mother was at home. She was unaware of any such arrangement.

28. Mrs. Mcleod filed an action in trespass which encompassed her ex-husband, and the police officers. Her claim against the police officers failed in the High Court and the Court of Appeal. Both Courts held that the police were protected by their common law power to enter and remain at the property without consent where they reasonably apprehend that there may be a breach of the peace. However, Mrs. Mcleod succeeded before the European Court which accepted that there was a genuine belief that there existed an agreement between Mr. and Mrs. Mcleod and that Mr. Mcleod's solicitor truly believed that there was a risk that a breach of the peace would occur (paragraph 55). Nevertheless, the European Court held, Judges Freeland and Mifsud Bonnici dissenting, that the entry of the police into the marital home was disproportionate and that the entry violated Mrs. Mcleod's Article 8 rights (paragraphs 57-58 thereof).

29. The European Court premised its decision on the fact that at the time the police entered Mrs. Mcleod's home, there was little or no risk of there being a breach of the peace (at paragraph 49). The only occupant of the house was Mrs. Mcleod's elderly mother. Even though upon Mrs. Mcleod's arrival the situation became heated, that was no justification for the police's initial entry.

30. In comparison with the **Mcleod** case relied upon by the Applicant, the Respondent contends that the present matter can be distinguished. The police in the former, went to Mrs. Mcleod's home not being in possession of the court's order. Therefore, they failed to verify Mr. Mcleod's entitlement to even enter

the premises. Additionally, the only person on the premises at the time of entry was a frail, elderly woman who could not reasonably have been expected to cause a breach of the peace.

31. Counsel for the Respondent in her submissions points out that in the instant matter, Carrington's affidavit refers to him being presented with the court order and writ of possession by Mrs. Partap (at paragraph 3). Additionally, based upon the evidence as presented by Janelle Lee, counsel submits that there was a real risk of a breach of the peace. The Applicant's niece, Ms Janelle Lee's refusal to vacate, created a situation which could easily have deteriorated given the request for Janelle Lee to vacate the premises and her insistence upon staying, apparently with a view to preventing the demolition.
32. Counsel contends that notwithstanding the Applicants assertion that Ms Lee was doing nothing more than remaining within the dwelling and therefore there was no risk of a breach of the peace, the police are entitled to act where there is a likelihood that a breach of the peace may occur. This proposition is stated in *Rita Porter v The Commissioner of Police for the Metropolis* (Unreported) Court of Appeal (Civil Division) at page 7 where the Judge notes, police officers on duty are required to maintain and preserve the peace, if possible, *before it is broken*, as well as to restore it after things have gone wrong'.
33. Counsel submits that on Janelle Lee's version of events, the police acted within their purview taking pre-emptive action to prevent any breach of the peace.
34. In any event, the Respondent points out that it is the evidence of the Respondent, as set out in Kennedy's affidavit, that no police officer '*broke any house or assisted in the breaking of any house of the Applicant*' (at paragraph 5)⁶. Also Kennedy's affidavit plainly states that the police were there to ensure that there was no breach of the peace.
35. Moreover, it is the Respondent's submission that the Applicant's evidence as to the events as they occurred on 20th May 2009 suffers from a few inconsistencies chief of which are Janelle Lee's three convictions the subjects of which, arose that same day. The Summary Courts Act, Chapter 4:20, at section 12, provides for the status of a record of proceedings in a magisterial matter, and states that;

Such record when signed by the Magistrate or Justice shall be conclusive evidence of the several matters and things therein contained.

⁶ The Court accepts this evidence.

36. Janelle Lee's version of events reveal no wrongdoing whatsoever on her part but imports the same to the police. The implication is that the police behaved badly and she did not. This, it is submitted by counsel for the Respondent, is inconsistent with the *fact* of her three convictions and her guilty plea. The record of the proceedings shows that Janelle Lee was charged with:
- (a) Resisting a police officer *in the execution of his duty*.
 - (b) Obstructing a police officer *in the execution of his duty*.
 - (c) Assaulting a police officer *in the execution of his duty*.
37. Ms. Lee, having the benefit of legal representation in the form of a Mr. Singh, pled guilty to each of the charges. The facts presented in support of Ms. Lee's three infractions were not contested by Ms. Lee. The Respondent submits that based on the foregoing facts, on a balance of probabilities it is more likely that she precipitated her removal from the premises as a result of her own bad behaviour. If the police were acting in the execution of their duty, which was ensuring that there was no breach of the peace, then it cannot be that they acted beyond their remit as claimed by the Applicant. Ms. Lee has not herself brought any civil action against the police.
38. On another note; the Applicant's action, founded as it is on Janelle Lee's version of events denying the facts in support of the Police prosecution's case against her, does represent a collateral attack on a final decision reached by a court of competent jurisdiction – The magistrates Court. Counsel for the Respondent proffers the case of *Hunter v Chief Constable of the West Midlands Police and Others* [1982] AC 529(541B) in support of the proposition that such an attack is an abuse of process (at page 541B).
39. Janelle Lee's recitation of events, especially her attempt to explain away her guilty plea at paragraph 19 in her affidavit, is at odds with the determination which arose from the Magistrates' Court. The Magistrates' Court being a Court of competent jurisdiction. The **Hunter case** highlights that the appropriate method for attacking such decisions is by way of appeal (at page 541C). However, Ms. Lee unequivocally pled guilty to the charges thereby thwarting any realistic chance of success on appeal.
40. The respondent contends that additionally the evidence of Ms Lee is not reliable. For instance, It is unclear when Ms. Lee was inside or outside of the dwelling based on paragraphs 7-10 of her affidavit. Further, although she gave evidence of her own removal and arrest, and that '*Claire Lee and Keron*

Lee also left' the premises, she made no mention of any police action against her relatives. Presumably their conduct, unlike hers, did not warrant arrest.

41. The Respondent, in the end, submits that the Applicant's evidence in this matter is unreliable.

DAMAGES⁷

42. One of the reliefs sought by the Applicant in this matter are damages in respect of the purported contravention of her Constitutional rights as set out under sections 4(a) or 4(b) of the Constitution. The Respondent submits that even if the Applicant had proved that the demolition of her house was unlawful and that by extension, the police effectively legitimised an unlawful act, the Applicant would still not be entitled to recover damages for breach of Constitutional rights.

43. Mr. Justice Deyalsingh in **Shyroon Mohammed** notes at page 13 where he discusses the constitutional rights of the squatter.

The first question is: Has the Applicant shown a right to the enjoyment of property? Clearly the chattel house or the materials from which it was constructed are property. These belonged to the Applicant and she has a right to the enjoyment thereof. But has she a right of such enjoyment as a trespasser on the lands of the State? In other words, is her fundamental right preserved intact if she violates the lawful rights of another? That certainly cannot be?

44. He goes on to state that 'Whatever rights a person has to property that right can only be enjoyed in conformity with the rights of others and not in violation thereof'⁸. In the instant matter, the Applicant has admitted that she was a squatter on the land upon which she constructed her dwelling. She also admits that she has only been on the land for a period of 11 years, too short a time to obtain rights to the land through adverse possession. The Applicant claims no title to the land. She 'cannot therefore, complain of any infringement of her fundamental right to the enjoyment of the house since she had no right to the enjoyment of that house' (**Shyroon Mohammed** at page 14) on another's land.

45. Simply put by counsel for the Respondent; the Applicant cannot 'be deprived of what she did not have' (**Shyroon Mohammed** at page 14). She is therefore not entitled to recover any damages.

⁷ See the submissions of counsel for the Respondent.

⁸ See pp13.

46. Counsel for the Respondent asserts that there are no local cases in which the constitutional rights of a squatter are vindicated, where the squatter has no legitimate claim to the land. The reason for that, contends counsel, is simply because squatting is an unlawful act and the Constitution ought not be used to protect 'rights' which are acquired contrary to the law.
47. In conclusion, the Respondent submitted that the Applicant is not entitled to the reliefs which she seeks. The evidence which she has adduced has not on a balance of probabilities established that the demolition of her house was unlawful.
48. Further, the Applicant attempts to establish a tenuous connection between the police presence, the arrest of her niece and the demolition of her dwelling. In this, the Respondent submitted, she also fails, as, short of a few unsubstantiated allegations, she has failed to produce cogent proof that *but for* the action of the police her dwelling would not have been destroyed. The demolition crew which accompanied Mrs. Partap and the Marshall did not act under the police's instruction. Based on the Notice attached to the 1999 Writ, it was Mrs. Partap who was to identify the lands in question to the Marshall.

DECISION

49. The Court on perusing the exhibits, weighing the evidence contained in the affidavits filed in this matter, considering the submissions and law put before the Court by both parties, is impressed with the arguments in favour of the Respondent, for the reasons provided by the Respondent substantially set out in its written submissions filed in this matter and for the reasons set out in this Judgment.
50. In weighing the contending evidence of the Claimant and Ms Lee and the evidence of the witnesses for the Respondent, I have also factored in, the inconsistency of her version of the facts with the import of her guilty pleas to the respective offences for which she was charged. In the context of this case, the commission of those offences are more consistent with the case for the Respondent. I have made allowances for the fact that, albeit in the minority of cases, at times persons plead guilty or for that matter fail to tell the truth in evidence, for a variety of reasons not necessarily consistent with guilt. Notwithstanding this allowance made, the Court views the evidence of the witnesses for the respondent as inherently consistent and plausible in the circumstances and accepts it over that of the witnesses for the Applicant.

51. In effect, in this case the Claimant is saying that until someone establishes a better title to the land upon which the house sat than she who is in possession, or shows that they, and/or, not the Plaintiff are in possession; then she has a sufficient interest to attract the protection of the Constitution.
52. The Court accepts that Mrs Partap and the Marshall were in possession of a lawfully obtained Court order and writ of possession and executed the order at the property defined in the said Order. I accept that the law provides that anyone found on the premises described in the Order is subject to the Order⁹. On a balance of probabilities, I accept that the Applicant's dwelling house was located upon the lands described in the Order notwithstanding the Applicant was not named in the Order. Indeed, there is no evidence to the contrary. As a consequence of this finding I make the further finding that the demolition was pursuant to the Order and lawful in the circumstances. Further still, I find that there is sufficient evidence (in the Court order, Writ etc.) before the court to establish that Mrs. Partap had a better title to the land than the Applicant. The burden of proving the unlawfulness of the entry lies with the Applicant. It is not sufficient to merely state that she was in possession, for that possession can be lawfully brought to an end in any manner consistent with 'due process'. That the property belonged to Mrs. Partap is not a fact peculiarly within the knowledge of Mrs. Partap either, but can be readily ascertained from the very documents served upon the Applicant and the subsequent documents filed in this matter and indeed, by the usual methods employed by a conveyancer or other legal practitioner. I note that Mrs Partap was not made a party to this or any other action by the Applicant. The Applicant has not asserted any right to the lands over Mrs. Partap. Neither has she claimed that Mrs. Partap or indeed any other person wrongfully pointed out the lands she occupied to the Marshall as provided for in the said order.
53. There is no dispute between the parties as to the law with respect to the duty of the police in preventing a breach of the peace. In this case, even on the evidence of Janelle Lee, it was reasonable of the police to have anticipated that a breach of the peace would have ensued had the Marshall and the demolition crew carried out their intentions. It was the evidence of Janelle Lee and confirmed by Marilyn Lee that Janelle remained in the house to dissuade the demolition crew from effecting their intentions.¹⁰ Further, the evidence – on either version - does not suggest that the actions of the police were disproportionate to that which the circumstances warranted. In this regard this case is distinguished from the facts of the **McCloud case** relied on by the Plaintiff¹¹. This however, was a

⁹ **R v Wandsworth County Court** (Supra)

¹⁰ See para 14 of Marilyn Lee and para 7-8 of Janelle Lee's Affidavits in this matter.

¹¹ See the submissions on the **McCloud case** at paras 25-30 above.

lawful entry, which met with resistance and/or defiance. This was a situation where a breach of the peace could have been anticipated,; was anticipated, and in fact, in the end, did take place.

54. I accept that the option of self help was available to Mrs. Partap. As an owner she can re-enter her property without the assistance of the court. Whether the Court Order names the Applicant or not is not the real issue. The issue is; who had the stronger right to the property. The Applicant has not established or indeed even asserted that she has a better title to the property than Mrs. Partap. Whether the entry by Mrs. Partap was on the basis of the court order and writ of possession or on the basis of self help; neither process has been shown to have been unlawful and in breach of the Constitutional rights of the Applicant. The police action in part hinges on the initial lawfulness of Partap's entry.
55. Finally, with respect to the application of the **Jaroo case** to facts of this case; the court is of the view that the two are not entirely on *all fours* with each other. I pose the same two questions in substance, that the Board posed in that case at para 16 thereof: Was the Plaintiff in a position to claim, when she filed her constitutional motion, that she had a constitutional right to the enjoyment of the lands upon which the house stood? And secondly, was she in a position to claim that she had been deprived of it other than by due process of Law? The short answer to the first questions put at its highest¹²; is, that she was probably not in a position to claim a constitutional right and protection of that right. She was however, indisputably in occupation of the subject lands, whether lawfully or unlawfully. (see **Jaroo** and the **Costello case** (Supra)). Even if she could claim a right and protection of that right, she has to satisfy the second question. The short answer to the second question is, No. For the reasons provided above, she is not in a position to claim that she had been deprived of the right to the enjoyment of the subject property without due process. The demolition order was lawful. The right to self help was lawful. And, the Court is not satisfied, on the evidence, that the Police broke and entered the subject premises as alleged.
56. It appears to the Court that on the facts as found by the Court and in all the circumstances of the case and applying the applicable law, the entry upon the land, the presence and action of the police and the demolition pursuant to the Court Order, was consistent with due process as envisioned by the Constitution of Trinidad and Tobago.

¹² Notwithstanding the **Jaroo case**, the court is not entirely satisfied that she had the right.

ORDER

57. For the reasons provided above, **IT IS HEREBY ORDERED AS FOLLOWS:**

- (i)** The motion is dismissed;
- (ii)** Judgment for the Respondent with Costs;
- (iii)** Costs to be taxed before the Registrar if not agreed between the parties.

DAVID C HARRIS
HIGH COURT JUDGE
OCTOBER 16, 2012