

THE REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

Claim No. CV 2017-01839

**IN THE MATTER OF AN APPLICATION BY DEVANT MAHARAJ FOR AN
ADMINISTRATIVE ORDER PURSUANT TO PART 56 OF THE CIVIL
PROCEEDINGS RULES 1998 AND THE JUDICIAL REVIEW ACT, CHAP 7:08**

AND

**IN THE MATTER OF AN APPLICATION FOR REDRESS PURSUANT TO SECTION
14 OF THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO FOR
THE VIOLATION OF FUNDAMENTAL RIGHTS GUARANTEED UNDER SECTION 4**

AND 5

BETWEEN

DEVANT MAHARAJ

Applicant/Intended Claimant

AND

THE COMMISSIONER OF VALUATIONS

First Intended Respondent

AND

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Second Intended Respondent

Before the Honourable Mr. Justice Frank Seepersad

Appearances:

1. Mr. Anand Ramlogan SC and Mr. Kent Samlal/A. Pariagsingh/D. Bayley/ C. Stewart/ R. Abdool-Mitchell instructed by J. Lutchmedial for the Applicant.
2. Mrs. Deborah Peake SC, Mr. Heffes-Doon, Ms. Z. Haynes Soo Hon, instructed by Ms. Diane Katwaroo for the Respondents.

Date of Delivery: May 19, 2017

DECISION

1. Before the court for its determination is the Applicant's application for leave to apply for Judicial Review (leave application) as well as a Notice of Application in which interim relief is sought (interim relief application).
2. In the leave application the relief sought is as follows:
 - (a) An order granting leave to the Applicant to apply for Judicial Review;
 - (b) A declaration that the Commissioner of Valuations has no legal authority pursuant to Section 6 of the Valuation of Land Act to require the Claimant and/or property owners to submit a Valuation Report Form (VRF) on or before May 22, 2017;
 - (c) An order of certiorari to quash the decision of the Commissioner of Valuations in the purported exercise of the power conferred by Section 6 to require the Claimant and/or property owners to submit a VRF on or before May 22, 2017;
 - (d) A declaration that the Applicant and/or property owners are under no legal obligation to submit the VRF and/or the "list of supporting documents" as requested;
 - (e) A declaration that the State cannot, pursuant to Section 6 of the Valuation of Land Act,

- prosecute the Applicant and/or any other property owner for failing and/or refusing to submit the VRF;
- (f) Pursuant to section 8 (d) of the Judicial Review Act, such other orders, directions or writs as it considers just and as the circumstances warrant;
3. On the interim relief application the relief sought is as follows:
- (a) An interim injunction restraining the Commissioner of Valuations, whether by himself or through his servant and/or agents, from taking any further steps to implement and/or enforce the decision contained in a press release dated April 19, 2017 that “all property owners are not required to complete a Valuation Report Form (VRF) in accordance with the Valuation of Land Act, Chapter 58:03 and return same, with supporting documents to the Valuation Division of the Ministry of Finance for the calculation of the property’s Annual Rental Value.”
- (b) Alternatively, a stay of implementation and/or enforcement of the decision contained in a press release dated April 19, 2017 that “all property owners are now required to complete a Valuation Return Form (VRF) in accordance with the Valuation of Land Act, Chapter 58:03 and return same, with supporting documents to the Valuation Division of the Ministry of Finance for the calculation of the property’s Annual Rental Value”.
- (c) Alternatively, an interim declaration that the Commissioner of Valuations has no legal authority pursuant to Section 6 of the Valuation of Land Act to require the Claimant and/or property owners to submit a VRF with supporting documents on or before May 22, 2017.
4. In the leave application, the Applicant also signalled an intention to pursue constitutional relief as against the Attorney General by virtue of which declaratory relief will be sought

in relation to provisions of the Valuation of Land Act Chap 58:03 and the Property Tax Act Chap 76:04.

5. The test to which the Court ought to address its mind when deciding whether or not it should grant leave, as outlined in **Carla Brown Antoine, The Deputy Director of Public Prosecutions et al v The Honourable Satnarine Sharma, The Chief Justice of Trinidad And Tobago et al Civ. Appeals No. 91 of 2006, 92 of 2006 and 93 of 2006**, is whether the Applicant has established an arguable ground for Judicial Review that has a realistic prospect of success and which is not subject to any discretionary bar such as a delay or an alternative remedy. At this stage the Court is not concerned with the facts but rather with the nature of the evidence for the purpose of “arguability”.
6. The law as it relates to the considerations which ought to be addressed when determining whether or not interim injunctive relief ought to be granted in public law matters was outlined by Bereaux JA at paragraphs 30-39 of **The Chief Fire Officer et al v Elizabeth Felix-Phillip et al** C.A. Civ S. 49/2013.
7. In its determination of the applications, the court considered inter alia the purport and effect of the relevant provisions in the **Valuation of Land Act Chap 58:03** and the **Property Tax Act Chap 76:04**.
8. The issue of property tax was reintroduced on the national stage in the 2017 Budget when the Minister of Finance in his Budget Speech stated as follows:
At page 13:
“... the existing Property Tax Act, which has a flat rate of 3 percent, will now be put into full effect in fiscal 2017, with the population of the valuation rolls, minor amendments to the relevant legislation and the completion of the other measures required under the Property Tax Act. Collection of Property Tax will therefore commence in 2017.”

At page 43:

“Property Tax collections will be fully implemented in 2017 based on The Property Tax Act 2009, with minor amendments to the Valuation of Land Act... New tax invoices will be issued in 2017, subsequent to the completion of the valuation roll prepared by the Commissioner of Valuations and the assessment roll prepared by the Inland Revenue Division. It should be noted that under the Valuations of Land Act, every owner is required to submit a return which will be used by the Valuation Division to calculate the Annual rental value, failing which the Division will prepare its own valuation.”

9. The Applicant contends that the proposed implementation of property tax is now being undertaken without the enactment of the necessary legislation and/or without amendments to the existing statutory framework.

10. **Sections 10-15 of the Property Tax Act** states:

“10. There shall be raised, levied, collected by and paid to the Board for the year beginning January 1, 2010, an annual tax in respect of all land.

11. The tax payable on land shall, in respect of the annual taxable value of the land, be based on the percentages set out in Schedule I.

12. The Valuation Roll created by the Commissioner under the Valuation of Land Act, shall be used to identify land for the purpose of assessment of tax under this Act and the Board of Inland Revenue shall assess taxes under this Act based on the valuations conducted by the Commissioner of Valuations under the Valuation of Land Act.

13. Where the Valuation Roll identifies the value of land for the purpose of assessment of tax on the land that value minus the allowances and deductions allowed under section 14 shall be considered the annual taxable value for the purpose of section 11.

14. (1) The Board of Inland Revenue in assessing any land for the purposes of this Act may make deductions and allowances in respect of voids and loss of rent equivalent to ten per cent of the annual rental value given in respect of the land in the Valuation Roll.

(2) The Minister may by Order increase or decrease the percentage of the deductions and allowances under subsection (1).

(3) An Order under subsection (2), shall be subject to affirmative resolution of Parliament.

15. The owner of land shall be liable under this Act for the payment of tax.”

11. The Applicant submitted that the legal position can be summarised as follows:

“a. By Section 23 of the Finance Act 2015, the Property Tax Act 2009 was amended by the insertion of Section 52A. This provides, in short, that the payment of any tax under the 2009 Act shall be waived for the period 1 January 2010 to 31 December 2015. In other words for the first six years of the tax it was waived by Parliament so that for these years no one could be under any obligation in respect of it.

b. Section 10 of the Act means, according to its language, that there was to be an annual, i.e. a tax every year, to start at the commencement of the calendar year 2010.

c. The tax depends on there being (see Section 11) an annual taxable value. By Section 12 of the Property Tax Act the Valuation Roll created by the Commissioner under the Valuation of Land Act was to be used to identify land for the purpose of assessment. Further, the Board of Inland Revenue was to assess taxes under the Act of 2009 based on a valuation conducted by the Commissioner of Valuation under the Valuation of Land Act.

d. Section 6(1) of the Valuation of Land Act required every owner of land in Trinidad and Tobago to make a return of the land in a particular form by a particular date, which has now passed. This legal requirement was in place as soon as Section 6(1) came into force.

It did not depend on any notice being submitted to the owner. Each owner was put under an obligation by virtue of Section 6(1).

e. Section 6 (2) provides that where an owner fails to file a return by 1 April 2010 the Commissioner shall by notice inform the owner he is required to file a return, failing which he may be liable to conviction under Section 6.

f. By Section 6(3) a notice under Section 6(2) (which is the only provision in Section 6 providing for notices) must be sent by registered post.

g. By Section 6(4) a person who wilfully fails to make a return within the prescribed time, i.e. by 1st April 2010, commits an offence and is liable on summary conviction to a fine of five hundred dollars.”

12. The Applicant also referred to a Media Release dated April 19, 2017 which stated that:

“all property owners are now required to complete a Valuation Return Form (VRF) in accordance with the Valuation of Land Act, Chapter 58:03 and return same, with supporting documents to the Valuation Division of the Ministry of Finance for the calculation of the property’s Annual Rental Value”.

13. The Applicant stated that he received a copy of the VRF via post and was informed that the deadline for submission would be May 22, 2017. The Applicant exhibited as “DM2” the VRF which he received and the said form is endorsed with a clause that it has been issued pursuant to Section 6 of the Valuation of Land Act.

14. The Court was referred to **Section 33 of the Summary Courts Act Chap 4:20** and the requirement that imposes a 6 month limitation period in relation summary offences and it was pointed out that in accordance with section 6(1) of the Valuation of Land Act the relevant filing should have been done by April 1, 2010 and therefore the 6 month period for prosecution commenced from that date.

15. The Applicant further submitted that in a circumstance where the deadline date was April 1, 2010, *“the only power that the Commissioner can now exercise under Section 6 is the power to issue the notice under Section 6(2) informing owners that they are required to file a return failing which they may be liable to conviction in accordance with Section 6(4).”*
16. The Intended Respondents submitted that section 6 of the Valuation of Land Act imposes a continuing duty upon every owner of property to fill out and return the VRF and that section 6(2) empowers the Commissioner, subsequent to the April 1, 2010, to issue a notice to property owners who fail to do so since they are under a continuing obligation. It was further submitted that it will be absurd and the legislative purpose under section 6 would be defeated if the obligation ended on the April 1, 2010.
17. The Intended Respondents also submitted that on the face of “DM2” there is no indication that the request made is mandatory or that a failure to comply would result in the imposition of a sanction. It was also submitted that this process amounted to a voluntary exercise whereby citizens could engage in the process of valuation before the Commissioner exercises any authority under section 6(2) of the Valuation of Lands Act or implements the process as outlined under section 15 of the Act.
18. The Applicant outlined that:
- “15. The issuance of this VRF under Section 6(2) is however invalid, illegal, null and void because:*
- a. It was non-compliant with schedule II as it sought copies of a variety of documents when schedule II makes no such provision. It seeks private and personal information some of which is plainly ultra vires and outside the scope of schedule II (for example, telephone number and email address). This form has no legal basis under Section 6 and violates the right to respect for private and family life under Section 4 (c) of the constitution. The Commissioner cannot unilaterally amend the prescribed form under section 6.*

- b. *The notice was not sent by registered post.*

- c. *The notice failed to draw attention to the fact that failure to make a return could not lead to a summary conviction; further such was not taken into account in reaching a decision to send the notice and no reasonable Commissioner would send a notice on such a wide-scale without advising the citizen that there is in fact no sanction for failure to make a return. Fundamental fairness and due process mandate that the citizen be advised that failure to comply with the notice that was purportedly issued under Section 6 cannot result in criminal prosecution.*

- d. *Alternatively, if there is a sanction or risk that non-compliance could result in a criminal charge and prosecution and conviction, the notice and/or the section 6 form itself is defective in that it failed to specify or identify this fact. This was a critical omission as there are different offences in the Act with different penalties. The Commissioner was therefore obliged as a matter of due process and fundamental fairness to clarify what the potential breach and penalty would be.*

- e. *This is a breach of Section 5(2)(h) of the Constitution namely, the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the enshrined rights and freedoms guaranteed by sections 4 and 5 of the constitution. The protected rights involved are the right not to be deprived of the right to enjoyment of one's property except by due process of law under Section 4 (a) and the right to respect for private and family life under Section 4 (c). The illegal attempt to value properties in breach of the law as a prelude to the demand for the payment of the property tax means that my client's rights "have been, are being or is likely to be contravened" (Section 14 of the constitution).*

- f. *The notice failed to draw attention to the difference between a failure to make a return, which can attract no sanction, and making a defective return which may*

result in a sanction. This omission is again a violation of the Section 5 (2) (h). Such a difference was plainly not taken into account for no reasonable Commissioner would send out such a notice that treated those who made a return in a materially different way from those who did not. Further, by seeking information and, in particular, documents for which there is no warrant under the schedule the Commissioner enhanced the risk that a return otherwise complete was thought by reference to the documents illegitimately sought to be defective or incomplete. This would imperil the sender.

g. The process adopted is manifestly unfair in that some may return the form together with copies of documents illegitimately sought; such persons may find themselves subject to tax whereas those who have not returned the form will or may avoid the tax.

h. Further, there has been no consideration of the fact that the only temporal requirement is linked to 2010.”

19. The Applicant further contends that there are a number of requirements under the Valuation of Land Act which have not been fulfilled such as:

“a. The time and form in which certain government departments must supply information to the Commissioner of Valuations (Section 14)

b. The form which the valuation roll should take (Section 16(1))

c. The form of the notice of valuation (Section 17(1))

d. Who will be furnished with copies of the Valuation Roll (Section 25)

e. The fee for a certified copy or extract from the valuation roll (Section 26)

f. The form a return of change of ownership (Section 28)”

20. It was further submitted that by section 17 of the Valuation of Land Act, the Commissioner is under a duty to serve a Notice of Valuation. This Notice cannot be given, in the case of a first valuation, *“before the President has, in accordance with section 7, fixed the date*

on or after which that valuation of such land shall take effect". Act No 17 of 2009 however repealed section 7 and in the circumstances the Notice cannot be lawfully served.

21. The Notice under the said section 17 triggers the time for the landowner who is dissatisfied with the valuation to object within 30 days (section 19). The Applicant argues that this defect in the Valuation of Land Act means that right of objection has been compromised in breach of the Claimant's rights under sections 4 (a), 4(b) and 5 (2) (e) and (h) of the Constitution and the absence of any consequential amendments in light of the repeal of section 7 means that there is no "first valuation" as stipulated by and in accordance with section 6.
22. The Applicant also pointed out that by section 9 of the Valuation of Land Act, a fresh valuation shall commence as near as may be to 5 years from the date of the last valuation of the land as recorded in the valuation roll. By Section 9(2), that fresh valuation shall take effect on a date fixed by Order of the President and as from such date the previous valuation shall to cease to be in force and contends that the repeal of Section 7 renders section 8 and 9 ambiguous, as there is no date on which the first valuation takes effect.
23. Having considered the submissions and having reviewed the relevant legislation, the Court is of the view that steps have been taken with a view to collect taxes which were imposed by the Property Tax Act of 2009 and therefore its supervisory jurisdiction can be invoked and it is empowered to quash any decision which it declares to be unlawful or any decision implemented via a process that is fundamentally flawed.
24. The process that is to be adopted in relation to the VRF impacts upon all citizens who are property owners and the public should not be called upon to act and to comply with statutory obligations if those obligations are not imposed within a statutory scheme that is authorised and which accords with the provisions of the Valuation of Land Act.
25. On the face of DM2, there is no indication that the process in relation to the submission of the Schedule II VRF is a voluntary one. The notice above the Schedule II VRF says that the Form "should" be returned by May 22, 2017. The Press Release that was exhibited as

DM3 also said that the VRF “should” be submitted and there was no indication that any recipient of the said Form or property owner could elect to take part in this voluntary exercise without threat of sanction. If the intent of the Commissioner was always to engage citizens in a voluntary exercise which was not premised upon any statutory foundation prior to his invocation of either section 6(2) or 15 of the Act, the said position ought to have been expressly communicated to the population. The Applicant directed the court’s attention to a CNC 3 interview which was also referred to at paragraph 17 of his affidavit. During the said broadcast, officials from the valuations division, Ministry of Finance, expressly stated that the failure to submit the VRF would attract sanctions. If there is a continuing obligation to submit a Schedule II VRF, then any property owner who has not done so is in violation of the law and the Act clearly outlines in section 6(2) the process to be adopted before any sanction can be imposed on individuals who have not submitted the said Schedule II VRF. That process requires a section 6(2) notice to be sent by the Commissioner and the Intended Respondents categorically stated that DM2 is not a section 6(2) notice.

26. The court cannot at this stage hold that the Applicant’s arguments are devoid of merit or that Applicant’s view, that the structure, scheme and operation of the Act is impacted and affected by the fact that there was no first valuation in accordance with section 6 and that the repeal of section 7 renders doubt with respect to the operation of section 9 thereby creating a situation of uncertainty, is one that is frivolous.
27. At this stage the court is of the view that there is no alternative remedy available to the Applicant and the factual matrix as outlined by the Applicant has not demonstrated that there has been undue delay in the institution of the instant application. Any person who is the owner of property like the Applicant, could, in the circumstances, legitimately hold the view that they are obligated under threat of sanction to fill out and submit the forms which have been mailed out by the Commissioner or which can be downloaded.
28. The Court considered the position expressed under section 29 of the Valuation of Land Act, by virtue of which the Commissioner has the power to request information by way of

public notice and the failure to comply with such a request attracts the sanction provided for under section 32.

29. Given the endorsement on “DM2” there is no doubt that the request made of the Applicant is under section 6 and not under section 29 of the Valuation of Land Act.
30. In a press release dated April 19, 2017 (“DM3”), the ministry of Finance at the second paragraph thereof expressly indicated that property tax is governed by the Property Tax Act of 2009 and the Valuation of Land Act Chap 58.03.
31. In an apparent contradiction with what was stated in the press release, on its website under the sub heading “Penalties and Obligations”, a copy of which was annexed as “DM4”, the Ministry of Finance made reference to the Valuation of Land Act 18 of 1969.
32. The VRF which the Applicant exhibited is not identical to the form provided for at Schedule II of the Valuation of Land Act, as the form in the said schedule does not require information in relation to one’s telephone number or email address. This information as it appears on “DM2” imposes an obligation on citizens to disclose information which is personal and private. There is no evidence to suggest that section 6 and or the Schedule II VRF was duly amended and in the absence of such an amendment, legitimate concerns can arise as to whether or not the request infringes upon the constitutional rights of citizens or whether same is permissible having regard to **section 60 of the Interpretation Act Chap 3.01.**
33. When one considers the wording of the VRF in relation to the documents required as well as the advertised position that owners are not obligated to submit supporting documents with the said VRF, there can exist in the minds of citizens, a degree of ambiguity as to what is required of them, as those who may not have access to the media release or to the Ministry’s website would be left to make a determination based on the wording of the VRF to submit same “*with copies of as many supporting documents as possible*”.

34. In democratic societies there should always exist a circumstance where the Law creates a climate of certainty. Citizens have a right to understand why they are mandated to act in a certain way and more importantly to be properly informed as to the sanctions to be imposed upon them if they fail to comply with the law. The public interest can never be served by the sanctioning of any process which imposes an obligation to act if that process is not premised upon a foundation that is lawful and constitutional.
35. The concept of separation of powers must be revered and strenuously defended. The executive arm of the state should never be permitted to exceed its jurisdiction and to eviscerate the authority vested in the legislative arm of the state and laws cannot be amended by ministerial decree or by way of press release.
36. Section 6 of the Valuation of Land Act is the foundation upon which the current attempt to implement property tax has been premised and the Applicant has demonstrated arguable grounds that have a realistic prospect of success in so far as he contends that the decision and process adopted in relation to the VRF under section 6 may be unlawful and that no sanctions may be possible without effecting legislative amendments to section 6.
37. At this stage the court does feel with a high degree of assurance that the Applicant may be able to establish an entitlement to the reliefs sought should the matter go to trial and the refusal to grant interim relief is likely to occasion a greater risk of injustice to the Applicant than the risk to the Respondents and the balance of justice mandates the court's intervention.
38. Accordingly, leave is hereby granted to the Applicant to pursue a claim for judicial review to seek the substantive relief outlined in the leave application.
39. The said leave is conditional upon the filing and service of the substantive claim on or before 4pm on Monday 22nd May, 2017 and the hearing of the 1st Case Management Conference is listed for Wednesday 31st May, 2017 at 9:30a.m. in Courtroom SF04 at the Supreme Court San Fernando.

40. On the application for Interim Relief, the Court hereby orders that with immediate effect there shall be a stay of the implementation and/or enforcement of the decision contained in a press release dated April 19, 2017 that “all property owners are now required to complete a Valuation Return Form (VRF) in accordance with the Valuation of Land Act, Chapter 58:03 and return same, with supporting documents to the Valuation Division of the Ministry of Finance for the calculation of the property’s Annual Rental Value”.

41. The said stay shall remain in effect until May 31, 2017 or until further order.

FRANK SEEPERSAD

JUDGE