

THE REPUBLIC OF TRINIDAD AND TOBAGO

Claim No. CV. 2020- 00516

IN THE MATTER OF THE CONSTITUTION OF TRINIDAD AND TOBAGO

And

**IN THE MATTER OF AN APPLICATION PURSUANT TO SECTION 14 OF
THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND
TOBAGO ALLEGING THAT THE PROVISIONS OF SECTION 4
THEREOF HAVE BEEN, ARE BEING AND ARE LIKELY TO BE
ABROGATED ABRIDGED OR INFRINGED**

And

**IN THE MATTER OF THE LAND ACQUISITION ACT, CHAPTER 58:01 AND THE
HIGHWAYS ACT, CHAPTER 48:01**

Between

ANDREW RODRIGUEZ

GABRIELLA RODRIGUEZ

Claimants

And

THE ATTORNEY GENERAL OF TRINIDAD AND TOBAGO

Defendant

Before the Honourable Mr Justice Frank Seepersad

Date: February 2, 2021.

Appearances:

1. Ms Raisa Caesar and Ms Zelica Haynes-Soo Hon, Attorneys-at-law for the Claimants.
2. No appearance by the State.

DECISION

1. Before the Court for its determination is the Claimants' Fixed Date Claim Form filed February 7, 2020 by virtue of which the following reliefs were sought:

- a. A declaration that the Claimants' right to the enjoyment of approximately 36 acres of their property located at Teemul Trace, LP#1032, Naparima-Mayaro Road, Union Village, Rio Claro comprising 46 acres three roods and ten perches and not to be deprived thereof except by due process of law has been and is likely to be infringed by the State in relation to the said property contrary to section 4 (a) of the Constitution.
 - b. A declaration that the State has failed to acquire and/or reserve the said 36 acres in accordance with the Land Acquisition Act and/or the Highways Act and therefore breached the Claimant's constitutional right to protection of the law guaranteed under section 4 (b) of the Constitution.
 - c. A declaration that the State has no right title or interest in the said property.
 - d. Damages for the breaches of the Claimants' rights under section 4 (a) and 4 (b) of the Constitution.
 - e. Compensation for the loss of use and enjoyment of the said 36 acres or that portion of the said property that is or was reserved for the proposed Highway from Princes Town to Mayaro from August 2013 and continuing.
 - f. Costs.
 - g. Interest.
 - h. Such further or other relief as the Court may consider just and necessary in the circumstances of this case.
2. In support of the Claimants' claim, a joint affidavit was filed on February 7, 2020 and a Supplemental Joint Affidavit was also filed on November 13, 2020.
 3. The Defendant failed to file any response and did not adduce any evidence in this matter notwithstanding the numerous extensions which were granted by the Court.
 4. The Claimants own the subject lands situate at Teemul Trace, LP#1032, Naparima-Mayaro Road, Union Village, Rio Claro ("the said property") as joint tenants. The said property comprises forty-six acres, three roods and ten perches.

5. On August 19, 2013 they submitted an application for planning permission for the said property to the Town and Country Planning Division and by letter dated October 10, 2013 the application was returned as undetermined and they were advised that certain defects/omissions had to be rectified. They were also informed that a portion of their property potentially formed part of lands targeted for highway development.
6. The Claimants were advised to liaise with the Director of Highways, Ministry of Works to determine the extent to which their property may be affected by the said highway development and they were further told that written communication clarifying same would be required before their application could be further processed.
7. By letters dated March 3, 2014 the Claimants wrote to the then Minister of Works and Infrastructure and to the Director of Highways and they sought clarification as to the exact expanse of their land which was or may have been required for the proposed highway .
8. By letter dated March 20, 2014 the then Minister of Works and Infrastructure informed the Claimants that their request had been forwarded to the Director of Highways for his attention.
9. On November 12, 2014 the Acting Chief Planning Engineer responded to the Claimants' letter of March 3, 2014 and enclosed a survey map . The map was divided into two colours, black and red. The black portion represented the area reserved for the proposed highway while the red portion depicted the section of unaffected land which the Claimants were free to develop (the map).
10. On January 30, 2015 the Claimants submitted the map and they were granted Outline Permission from the Town and Country Planning Division to develop approximately 10 acres of their land which was depicted as the red portion of the map.
11. By letter dated April 12, 2016 the Claimants wrote to the Director of Highways and enquired as to a timeline within which the State would acquire the portion of their land which was earmarked to be affected by the highway expansion. They also indicated their

willingness to sell the affected section and outlined that this sale would affect their development plans as they were retirees.

12. On August 24, 2016 the Claimants received a Notice of Grant of Permission to Develop Land subject to the Conditions which specified that they were permitted to carry out development of land situate at R1-R12 Teemul Street, Union Village, Nariva, Cocal by the subdivision of the site to create eleven residential plots and one agricultural parcel in accordance with the Minister's decision on review. The conditions outlined that the consent of the National Infrastructure Development Company (NIDCO) was to be obtained prior to the commencement of the development and that consent of the Local Authority also had to be obtained prior to the commencement of development.
13. No notices pursuant to the Land Acquisition Act Chap. 58:01 or the Highways Act Chap. 48:01 were ever served on the Claimants regarding their land which was depicted as the black area on the map.
14. By letter dated November 17, 2016 the Claimants wrote to the Minister of Works and Transport regarding their property and they stated, *inter alia*, that they were being deprived of the use of their property pursuant to a governmental directive and they asserted that they were enduring great hardship since they were unable to develop their property.
15. By letter dated May 12, 2017 the Vice President of Engineering and Programme Management wrote to the Claimants and indicated that the proposed development is outside the proposed highway right of way limits.
16. By pre-action letter dated August 16, 2019 counsel for the Claimants wrote to the Permanent Secretary of the Ministry of Works and Transport and stated, *inter alia*, that the Claimants were not served with any notice pursuant to the Land Acquisition Act or the Highways Act and requested compensation for 36 acres of the said property which they were told would be affected by the proposed highway.

17. The President of NIDCO responded by letter dated August 22, 2019 stating that the proposed highway project was never under NIDCO's purview and that the claim was wrongly directed to them.
18. By letter dated October 31, 2019 the Ministry of Works and Transport admitted that its letter of November 12, 2014 to the Claimants noted that a part of the said property was reserved for the proposed highway but the Ministry also stated that by letter dated September 28, 2016, Town and Country Planning Division was informed that there were no plans to construct a highway along a route which would affect the Claimants' property and that any restriction previously imposed should be lifted. The Claimants deposed that they never received a copy of the said letter.
19. The Claimants contend that constitutional rights have been infringed as they were unable to develop 36 acres of their property. They also claimed that the area is now overgrown with bushes and trees and that significant costs will have to be incurred to clear and clean the property.
20. The aforementioned uncontroverted factual matrix requires the Court to determine the following issues:
 - a. Whether there was a breach of the Claimants' constitutional rights pursuant to sections 4 (a) and (b) of the Constitution; and
 - b. Whether the Claimants are entitled to damages for breach of their constitutional rights and the measure of damages which should be paid.

Issue 1:

21. Section 4(a) and (b) of the Constitution provides as follows:

“4. It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely:

- (a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;
- (b) the right of the individual to equality before the law and the protection of the law;”

22. The resolution of the outlined issues also requires regard to provisions of the Land Acquisition Act Chap. 58:01 namely Sections 3, 5 and 10 and the Highways Act Chap. 48:01 namely Sections 118 and 121.

23. The Claimants’ evidence established that the State did correspond with them concerning the proposed Mayaro highway development and expressed the possible effect that the development could have on a significant portion of their land. The relevant correspondences are as follows:

- a. October 10, 2013- letter from Town and Country Planning Division indicating that the site may be in an area which may be affected by proposals for highway improvement (the October 2013 letter).
- b. March 20, 2014- letter from the Minister of Works and Infrastructure acknowledging receipt of letter.
- c. November 12, 2014- letter from Ministry of Works and Infrastructure and a map which depicted the area of land which would be likely compromised as well as the portion of the land which the Claimants would be able to develop (the map letter).
- d. January 30, 2015- letter from Town and Country Planning Division giving the Claimants permission to develop 10 acres of their land.
- e. August 24, 2016- notice of grant of permission to develop land subject to conditions.

- f. May 12, 2017- letter from NIDCO indicating that the proposed development is outside of the proposed highway right of way limits.
- g. October 31, 2019- letter from Ministry of Works and Transport wherein the Ministry acknowledged that the letter of November 12, 2014 was sent.

24. Section 121 of the Highways Act Chap. 48:01 provides *inter alia*:

121 (1) Any power to acquire land compulsorily conferred by section 118 or section 120, on a local highway authority is exercisable in any particular case on its being authorised so to do by the Minister, and section 10(2) and Part II of the Schedule to the Land Acquisition Act have effect in relation thereto.

(2) The power vested in the Minister by section 118 to acquire land compulsorily is a power vested in the State and exercisable in accordance with the Land Acquisition Act.

25. The correspondences referenced above establish that during the period October 2013 to May 2017, the Claimants' ability to use and enjoy their property was curtailed due to the representation that it was likely that 36 acres of their land would be affected by the proposed highway development. As a direct consequence the Claimants were only permitted to develop 10 acres of their approximately 46 acre parcel of land. This restriction was imposed upon them although the process outlined under Section 121 of Highways Act was never engaged.

26. In **HCA 7203 of 1986 M.M. Brokers Limited v the Attorney General of Trinidad and Tobago** the applicant claimed that the government had appropriated its lands for public purposes, i.e. the construction of a highway, without going through the due process of law and that it did not adhere to the provisions of the Land Acquisition Act. By motion pursuant to Section 14 of the Constitution the applicant sought declarations that its rights to the enjoyment of property and to equality before the law and the protection of the law have been infringed by the respondent.

27. It was held by Lucky J (as he then was), *inter alia*, that the provisions of Section 5 of the Land Acquisition Act were not followed.
28. The difference between the facts of the instant case and *M.M. Brokers Ltd* (supra) is that in the latter, the State eventually used the land for construction of a highway and the notice under Section 5 of the Land Acquisition Act was published shortly before Lucky J (as he then was) delivered judgment.
29. In the instant proceedings, notwithstanding the various letters and the representations and restrictions contained therein, the highway development plan was seemingly altered on or about May 2017 as the State eventually determined that the Claimants' land was not to be utilized or impacted by the highway project.
30. At paragraphs 29 and 31 Lucky J (as he then was) in *M.M Brokers Ltd* (supra), said as follows:

“29. In the case of *Trinidad Island-Wide Cane Farmers and Attorney General v. Seereeram* (1975) 27 W.I.R. p. 329 which has been referred to by attorneys, it was held that there is no vested right in the State to acquire the property of an individual without payment of compensation. *Section 4(a) of the Constitution prescribes that there exists the fundamental right to “enjoyment of property and the right not to be deprived thereof except by due process of law”.* In my view herein lies the watershed in determining the meaning of due process of law for purposes of this motion. *Due process of law must mean the right to compensation under the existing law, which is the Land Acquisition Act. The Act provides for the deprivation by acquisition of an individual's property and in the due process that individual's right to adequate compensation is recognised.* This concept is also recognised in English and American Law.”

...

31. In this country the right to the enjoyment of property is a fundamental right enshrined in the Constitution and an individual ought not to be deprived of same without due process of law.”

(Emphasis Court’s)

31. The State can deprive any citizen of the right to the enjoyment of his/her land provided that it adheres to the provisions of the Land Acquisition Act. Failure to do so would result in an infringement of the protected Section 4(a) rights.

32. In the instant matter, the Defendant through its various agents/servants, unequivocally represented to the Claimants that they would not be able to enjoy the full benefit of their property and develop the entirety of same. The aforesaid position was premised on the possibility that the proposed highway development may have impacted upon a significant portion of the Claimants’ land however due process as outlined under the Highways Act was not engaged.

33. In European Court of Human Rights decision of **Sporrong and Lonnroth v Sweden (Application No. 7151/75; 7152/75)** there were two applications which related to the effects of long-term expropriation permits and prohibitions on construction on the applicants in their capacity as property owners. The court found that in the absence of a formal expropriation, that is to say a transfer of ownership, it must look behind the appearances and investigate the realities of the situation complained of. The Court at paragraph 60 stated as follows:

“Although the expropriation permits left intact in law the owners’ right to use and dispose of their possessions, they nevertheless in practice significantly reduced the possibility of its exercise. They also affected the very substance of ownership in that they recognised before the event that any expropriation would be lawful and authorised the City of Stockholm to expropriate whenever it found it expedient to

do so. The applicants' right of property thus became precarious and defeasible. The prohibitions on construction, for their part, undoubtedly restricted the applicants' right to use their possessions...

There was therefore an interference with the applicants' right of property and, as the Commission rightly pointed out, the consequences of that interference were undoubtedly rendered more serious by the combined use, over a long period of time, of expropriation permits and prohibitions on construction."

34. Lord Steyn in **Allie Mohammed v The State 53 WIR 444** at page 454 stated:

"It is a matter of fundamental importance that a right has been considered important enough by the people of Trinidad and Tobago, through their representatives, to be enshrined in their Constitution. The stamp of constitutionality on a citizen's rights is not meaningless: it is clear testimony that an added value is attached to the protection of the right. ... On the other hand, it is important to bear in mind the nature of a particular constitutional guarantee and the nature of a particular breach."

35. In **Lucas and another v Chief Education Officer and another [2015] CCJ 6 (AJ)** the Caribbean Court of Justice at paragraph 138 examined the right to the protection of the law:

"138. The right to the protection of the law is broad and pervasive. The right is anchored in and complements the State's commitment to the rule of law. The rule of law demands that the citizenry be provided with access to appropriate avenues to prosecute, and effective remedies to vindicate, any interference with their rights. The citizen must be afforded "adequate safeguards against irrationality, unreasonableness, fundamental unfairness or arbitrary exercise of power". *The right to protection of the law may successfully be invoked whenever the State seriously prejudices the entitlement of a citizen to be treated lawfully, fairly or*

reasonably and no cause of action is available effectively to assuage consequences to the citizen that are deleterious and substantial. There is therefore likely to be a breach of the right whenever a litigant is absolutely compelled to seek vindication under the Constitution for infringement by the State of a fundamental right. But even where no other fundamental right is impacted, the right to protection of the law may also be implicated when there is a violation of due process and a denial of the citizen's expectations of fairness, procedural propriety and natural justice..."

(Emphasis Court's)

36. Having considered the facts and the law, this Court is of the view that the State compromised the Claimants' ability to fully utilize the entirety of their lands and infringed their rights under sections 4 (a) and (b) of the Constitution.

37. The combined effect of the Defendant's actions from 2013 to 2017 unjustifiably deprived the Claimants of the opportunity to pursue and/or obtain the requisite approval to develop the entirety of their land. This was done in the absence of due process and was seemingly premised on the speculative assessment that a portion of the Claimants' land "may have been" affected by the highway project.

38. It is always within the remit of the State to review policy decisions but when these changes are made, such altered positions are often characterized by collateral damage.

39. There is no information as to why there was a shift in the position which was signaled in the October 2013 letter or the 2014 Map letter. If there was uncertainty in 2013 or 2014 as to the proposed route for the highway, the Claimants should not have been prevented from pursuing their request for permission to develop the entirety of their land. In essence the Claimants were made to adopt a holding position, for nearly 4 years, in relation to the possible development of 36 acres of their land. The

constitutional rights of citizens cannot be compromised while the State fashions its policy positions or alters previous policy plans.

40. **The establishment of national infrastructural development plans may insulate against arbitrary policy changes especially when there is a change of administration and such a course may well serve to protect the public purse and lead to improved governance.**

Issue 2:

41. Having established that the Claimants' rights under Section 4(a) and (b) were infringed, this Court must determine the redress to which the Claimants are entitled to under Section 14 of the Constitution.
42. In **The Attorney General v Ramanoop [2005] UKPC 15** Lord Nicholls explained the purpose of Section 14 at paragraphs 17 to 19:

“[17] Their Lordships view the matter as follows. Section 14 recognises and affirms the court's power to award remedies for contravention of chapter I rights and freedoms. This jurisdiction is an integral part of the protection chapter I of the Constitution confers on the citizens of Trinidad and Tobago. It is an essential element in the protection intended to be afforded by the Constitution against misuse of state power. Section 14 presupposes that, by exercise of this jurisdiction, the court will be able to afford the wronged citizen effective relief in respect of the state's violation of a constitutional right. This jurisdiction is separate from and additional to (“without prejudice to”) all other remedial jurisdictions of the court.

[18] When exercising this constitutional jurisdiction the court is concerned to uphold, or vindicate, the constitutional right which has been contravened. A declaration by the court will articulate the fact of the violation, but in most cases more will be required than words. If the person wronged has suffered damage, the court may award him compensation. The comparable common law measure of

damages will often be a useful guide in assessing the amount of this compensation. But this measure is no more than a guide because the award of compensation under s 14 is discretionary and, moreover, the violation of the constitutional right will not always be coterminous with the cause of action at law.

[19] An award of compensation will go some distance towards vindicating the infringed constitutional right. How far it goes will depend on the circumstances, but in principle it may well not suffice. The fact that the right violated was a constitutional right adds an extra dimension to the wrong. An additional award, not necessarily of substantial size, may be needed to reflect the sense of public outrage, emphasise the importance of the constitutional right and the gravity of the breach, and deter further breaches. All these elements have a place in this additional award. “Redress” in s 14 is apt to encompass such an award if the court considers it is required having regard to all the circumstances. Although such an award, where called for, is likely in most cases to cover much the same ground in financial terms as would an award by way of punishment in the strict sense of retribution, punishment in the latter sense is not its object. Accordingly, the expressions “punitive damages” or “exemplary damages” are better avoided as descriptions of this type of additional award.”

43. The Claimants filed a supplemental affidavit in support of their Fixed Date Claim Form on November 13, 2020 and they attached a valuation report for the said property which outlined that the annual rental value of 36 acres of their property is \$39,000.00.
44. In assessing the damages to be awarded to the Claimants, the Court notes that both Claimants are retirees and they had plans to develop their property so as to benefit them during their retirement. These plans were however stymied by the State.
45. The Court also considered the ruling of De La Bastide CJ (as he then was) in **Attorney General v MM Brokers Ltd 50 WIR 462**. In that case, which was an appeal from the

ruling of Lucky J (as he then was) in *MM Brokers* (supra), the appellants appealed to the Court of Appeal against the assessment of damages by the trial judge.

46. Though the facts of that case and the instant proceedings are different, as mentioned previously, the reasoning of De La Bastide CJ (as he then was) is particularly instructive. Although the government eventually acquired the land as per the requirements of the Land Acquisition Act, the Court approached assessment of damages on the footing that it was not dealing with a claim for compensation for land that was lawfully acquired by the Government. At page 468 the Court stated, “*In this case, the State has wrongfully deprived the respondent of its land. Its position is similar to that of a tortfeasor.*”

47. At pages 470 to 471 the Court further stated:

“Although the belated publication of the section 5 notice may have given the respondent an alternative route to compensation, it did not deprive the respondent of its right to be fully compensated in damages for the confiscation of its property that had already been perpetrated in breach of its constitutional rights. ***I would like to make it clear that I have reached this conclusion on the facts of this case and I should not be understood as holding that in every case in which there is delay in publishing a section 5 notice after the State has entered upon land, the land owner is entitled to claim compensation for the loss of his land as damages for breach of his constitutional rights rather than under the provisions of the Land Acquisition Act. Each case must be decided on its own facts.***”

(Emphasis Court’s)

48. The approach of the Court of Appeal seems to suggest that barring the formal acquisition of the land under the Land Acquisition Act, the aggrieved person can be awarded damages for breach of his constitutional right for enjoyment of his property. In terms of the proper measure of damages the Court at page 472 stated:

“It seems to me that there is no need to depart from the basic principle that damages should be assessed by reference to the loss which the innocent party has suffered as a result of the wrong done to it. In the circumstances of this case, that would be the value of the land in the condition in which it was at the time when the State entered on it and took it over. Again, in accordance with general principles, the relevant value should be the market value.”

49. The Court stopped short of making an assessment of damages because the respondent did not provide the relevant evidence which was needed to support his claim i.e. the evidence with regard to both the nature and the cost of these improvements (as per page 473).

50. On the instant facts, the State effectively paused the Claimants’ rights and barred them from the full enjoyment of their property for over 3 years although there was no compliance with the statutory provisions in relation to land acquisition. Since the State did not acquire the subject land under the Land Acquisition Act, the Claimants would be unable to seek compensation under the provisions of same. However, as suggested by the Court of Appeal in MM Brokers Ltd, the Claimants cannot be without a remedy and they ought to be awarded damages for the breach of their constitutional right to enjoyment of their property and protection of the law.

51. There is no dispute as to the fact that the Claimants’ title to the entire parcel of land was never transferred to the State and although they were unable to subdivide same, they were not prevented from cleaning, traversing or accessing their property.

52. The Claimants provided no evidence before this Court as to the condition of the said property pre-2013 and the Court is unable to make any assessment as to whether the physical condition of the land deteriorated from October 2013 to May 2017 .

53. Having considered the evidence of the annual rental value of \$39,000.00 and having noted that the restriction on the Claimants’ ability to pursue the development of the entirety of their land and having also noted the ages of the Claimants, in the exercise of its discretion this Court is of the view that the Claimants would be adequately compensated for the

infringement of their constitutional right to enjoy their property if they are paid the sum of \$175,000.00.

54. For the reasons outlined the Court grants the following declaration and relief :

- a. The Court declares that between the period October 31,2013 to May 12, 2017 the Claimants' right to the enjoyment of their property and not to be deprived thereof except by due process of law was infringed contrary to sections 4 (a) and (b) of the Constitution.
- b. The Defendant is to compensate the Claimants and shall pay to them the sum of \$175,000.00 for breach of their constitutional rights under Section 4(a) and (b).
- c. The Defendant shall pay the Claimants costs to be assessed by this Court in default of agreement.
- d. Stay of execution of 28 days.

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FRANK SEEPERSAD

JUDGE