FOWDAR ANANDLALL. v BOARD OF ASSESSMENT & ANOR

2023 SCJ 324

Record No. 117240

THE SUPREME COURT OF MAURITIUS

In the matter of:

FOWDAR Anandlall

Appellant

v.

1. **Board of Assessment**
2. **Ministry of Housing and Lands**

Respondents

JUDGMENT

1. This is an appeal from the Award of the first respondent, the Board of Assessment ("BOA") on the quantum of compensation following the compulsory acquisition of the appellant's property (6000.82 square metres) under the Land Acquisition Act ("the Act") situated at Petit Camp, Phoenix. The acquisition was for the purposes of the construction of the Terre Rouge-Verdun-Trianon Link Road.

2. The property of the appellant is described as Serial Number 15 ("SN 15") and the relevant date of acquisition is the first publication of the section 8 notice under the Act: 29th January 2011. Mrs Khedun-Sewoogobind, the valuer for the second respondent ("the Ministry") valued the land at Rs. 2.5 million per arpent. Mr. Saddul, the valuer for the appellant gave an opposing value of Rs. 6.5 million per arpent. The BOA awarded compensation based on the value of Rs. 2.5 million per arpent.

3. The appellant has raised 9 grounds of appeal but has not offered submissions for ground 9 in the skeleton arguments. There is a preliminary objection from the Ministry regarding

grounds 1 and 9. It is submitted that ground 1 is vague, couched in uncertain terms and challenges the decision of the BOA in general terms so as not to amount to a proper ground of appeal. With respect to the ground 9, learned counsel for the Ministry submits that it should be set aside in as much as it challenges the legality of section 18(6) of the Act which falls outside the jurisdiction of this court.

Preliminary objection

4. Learned counsel for the Ministry submitted that ground 1 is similar to a ground of appeal raised in the case of **Gokool R & Anor v Board of Assessment & Anor** [2018 SCJ 241] in which the court held that the ground was a preamble to the appeal and did not constitute a proper ground of appeal.

5. This ground states that the value given by the Ministry's expert was "wrong in law, unjust and unreasonable" and it lacked reliability and objectivity. The ground does not state why it is unjust and unreasonable or was unreliable and not objective. What we can extract from this ground is that the appellant takes issue with the fact that compensation is taking place seven years after the compulsory acquisition. It is also contended by the appellant in this ground that the compensation will fail to provide the appellant with sufficient financial recompense to be able to purchase a comparable plot with similar advantages after seven years. We observe that this ground was incorrectly sought to be perfected in the skeleton arguments wherein the required issues were addressed in detail. We agree that this is not a proper ground of appeal and it therefore is not considered and is dismissed.

6. As no submissions have been offered under ground 9 in the skeleton arguments, it is not considered and is dismissed.

7. Before considering the remaining grounds of appeal, we need to comment on the manner in which they were drafted. We agree with the description given by Hamuth J and Madhub J in the case of **Boodhoo B. (Ww) v Board of Assessment & Anor** [2018 SCJ 254] that the grounds in that appeal which are similarly worded to the present appeal "*are a mix-up of the actual ground with the essence of the argument in purported support thereof*". The judges had to find their way through the real complaints in that case as we do in the present matter.

Grounds 2 and 3

8. We find it appropriate to deal with grounds 2 and 3 together as they both are dependent on another compulsory acquisition where the quantum of compensation was based on Rs. 2,500,000 per arpent given by another BOA to Mrs Boodhoo[1]. This it would seem [2] to be a figure which had been offered by other valuers before other Boards of Assessment.

9. In the appeal case of **Boodhoo**, the court found that the evidence on record was insufficient to assess the market value of the subject property and therefore an appropriate compensation could not be determined by it. The court decided to remit the matter to the Ministry for a new board of assessment to be appointed.

10. Before us, the appellant contends that the BOA should have taken judicial notice that the award of Mrs Boodhoo had been quashed as the judgment was delivered three weeks before the present award was made.

11. Even though the judgment of **Boodhoo** was delivered prior to the date of the award which is the subject matter of the present appeal, it is important that the issue raised in ground 3 we are considering, was not canvassed and submitted upon before the BOA. It is therefore improper for it to be raised and considered now upon appeal. We do not find it appropriate to consider the judgment of **Boodhoo** and the award of its relevant board of assessment. In addition, the absence of the record and therefore the evidence before both the relevant court and board of assessment, any consideration by this court would be skewed. It would also potentially lead this bench considering the same material which has already been subject of a pronouncement of the Supreme Court.

12. Furthermore, even if this exercise is carried out from the material available, we find that we can distinguish **Boodhoo** as Mrs Khedun-Sewoogobind apparently did not justify the change from an initial valuation of Rs 600,000 per arpent to the figure of Rs. 2.5 million. In the present BOA, Mrs Khedun-Sewoogobind did provide an explanation and comparable sales evidence. From the judgment of **Boodhoo**, there is also no evidence that the offer at the rate of Rs. 2,500,000 per arpent was accepted[3].

13. These two grounds of appeal are therefore not of substance and are dismissed.

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[1] In the case of **Boodhoo B. (Ww) v Board of Assessment & Anor [2018 SCJ 254]**
[2] According to the wording of ground 2, 2nd paragraph
[3] See page 8 of **Boodhoo**

Ground 4

14. For reasons which will become apparent, this ground needs to be considered in two stages. For the first stage, this ground relates to evidence of sales which have occurred subsequent to the date of the compulsory acquisition and whether these can be used as a basis of comparison in reaching the market value of the subject property.

15. In a nutshell, the appellant submits that sales which occur after the compulsory acquisition can and should be taken into consideration by a board of assessment and relies on the judgment of **Melwood Units Property Ltd v Commissioner of Main Roads 1970 1 All ER 161** to support this.

16. Learned counsel for the second respondent (the Ministry) submits otherwise and relies on the wording of the sections of law in the Act as well as the judgment of **Société Blue Diamond v Registrar General** [2014 SCJ 64]. She also makes the point that the decision of **Melwood** pre-dates the Act.

17. We have scrutinised the relevant sections which learned counsel for the Ministry has set out in her skeleton arguments. It is noteworthy that the Act states at what date the value of the property being compulsorily purchased has to be assessed, it does not specifically prevent any reliance on post-dated sales in reaching the amount for the compensation.

18. Section 8(2)(d) of the Act which has been pinpointed by learned counsel for the Ministry, provides for the interested person to give the authorised officer within 14 days of the second publication of the notice in the Gazette, a written declaration of the nature of his interest in the land and of the amount and details of his claim for compensation.

19. We have perused the documents of this appeal and have been unable to find either the second publication of the notice under section 8 or the date that this was done.

20. What we have found is a letter from the Ministry to the appellant dated the 1st of December 2011 in which an offer for compensation is made. The appellant replies to the offer by way of two letters dated the 12th and the 21st of December 2011. In both letters, he rejects the amount offered in compensation and claims the amount between Rs.19,325,774 to Rs. 29,817,018 in totality.

21. The date of the second publication of the notice in the present matter is 29 January 2011 and the claim for compensation is made under section 14 of the Act. It was made in writing[4] by way of two letters dated the 12th and 21st of December 2011. Section 19(5) states that the claim for compensation should specify the amount to be paid and that no award shall be made which is in excess of the amount claimed. We fail to see how this section excludes the consideration of the sale which occurred on the 15th of February 2011 in assessing the value to be ascribed to the subject property.

22. We find that there is not necessarily a contradiction in considering post acquisition sales to comply with section 19(3) as reproduced hereunder:

> *The value of any interest in the land shall be the amount which that interest, if sold on the open market by a willing seller, might be expected to realise at the date of the first publication of the notice under section 8.*

23. The approach we adopt on this issue is that post acquisition sales can still be used to assess the value of the land on the market "at the date of the first publication of the notice under section 8".

24. Section 19(3) which is the foundation section as to what date the value of the subject property should be assessed, does not exclude any **comparison** of sales in the open market by a willing seller either before or after the crucial date of compulsory acquisition. We are of the view that this can be interpreted to allow consideration of post acquisition sales to help reach "*the amount which that interest if sold on the open market at the date at the date of acquisition* "[5]

25. After a consideration of the relevant sections of the Land Acquisition Act set out by learned counsel for the second respondent, we find no reason as to why the judgment of **Melwood** properties would not be persuasive simply because it was delivered prior to the coming into force of the Act.

26. We now closely consider the judgments of **Société Blue Diamond** and **Melwood** referred to by both Counsel. Learned counsel for the Ministry submits that **Société Blue Diamond** is authority for the premise that no sales evidence which occurs after a compulsory acquisition can be considered.

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[4] As provided under section 14(1) of the Land Acquisition Act
[5] The date of the first publication of the notice under section 8 of the Land Acquisition Act

27. Learned counsel for the appellant makes the distinction that the judgment of **Société Blue Diamond** was one which dealt with market value for the purposes of registration and not with market value for the purposes of compulsory acquisition.

28. The judges in the case of **Société Blue Diamond** were fully alive to the difference between a valuation made for the purposes of compensation and for the purposes of levying registration duty. This is the reason why they made a distinction upon being referred to the judgment of the Judicial Committee of the Privy Council in **Mon Trésor and Mon Desert Limited v Ministry of Housing and Lands (Mauritius) and Board of Assessment [2008] UKPC 31**, more specifically the following extract which they reproduced in **Société Blue Diamond**:

> i. *In assessing this value the best evidence is comparison with figures from other sales of comparable property.*
>
> ii. *The land acquired must be valued not merely by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future:* ***Gajapatiraju v The Revenue Divisional Officer, [1939] AC 302****.*

29. The Honourable Judges Mungly-Gulbul (as she then was) and Bhaukaurally in **Société Blue Diamond** had this to say as to the difference:

> *The case of* ***Mon Desert Mon Tresor*** *involved a compulsory acquisition of land belonging to the appellant, by the government. The issue before the Privy Council was in relation to the most appropriate method of valuation for the purposes of compensation to the previous owners, viz. the direct method using comparables of land of similar nature and location and the residual method.*
>
> *The above highlighted extract from the judgment of the Privy Council must be viewed in its proper context. It is not authority for the proposition that sales postdating the subject sale are relevant in determining the market value of a property or that due account must be taken of uses to which it is reasonably capable of being put in the future. In fact if the use to which the property is reasonably capable of being put to in the future were to be taken into account, this might very well work to the detriment of the purchaser whose property might, in view of a potential for development, be assessed at a value higher than the actual market value at the time of sale. The market value of a property can only be the value which such property would fetch on the open market at the time of the sale.*
>
> *Whilst the potential for development of a property in the future is undoubtedly a relevant factor in determining the compensation payable with respect to a*

> *compulsory acquisition, when assessing the market value of a property for registration purposes, it is the actual market value as at the time of the sale that is the material factor such that evidence of sales postdating the sale of the subject property, cannot be taken into consideration.*
>
> The underlining is ours.

30. We believe the following oft cited extract of **Blue Diamond** (and which was relied upon by the BOA whose award is on appeal before us) should be read with relevant caution and be limited to cases relating to Land Duties and Taxes Act as to the difference:

> *It stands to reason that when assessing the value of a property, the material date would be the date of sale of the subject property*[6] *and the sale evidence used must be with respect to sales that have already taken place. Evidence of sales subsequent to the sale of the subject property cannot be taken into account for the simple reason that they had not yet taken place at the time of valuation.*

31. The judgment of **Emtel Ltd v Assessment Review Committee and Anor [2010 SCJ 113]** which was cited in **Blue Diamond** is also a case stated concerning the value ascribed to a property upon its sale which is not agreed by the Registrar General. Sections 27A(1)(b) and 28(6) of the Land Duties and Taxes Act apply as to how this value is assessed. There is a difference between an appeal from the decision of a Board of Assessment for compensation and a case stated concerning the valuation of a property actually sold for the purposes of levying a tax.

32. Therefore, we agree with this specific submission of learned counsel for the appellant that the above extract does not strictly apply in the cases of valuation of compensation in the cases of compulsory acquisitions[7].

33. Even though it is the same government valuers who are involved in the valuation of property prices, a distinction has to be made between the valuation for the Registrar General to levy duty and for the valuation for the purposes of compensation following a compulsory acquisition. The Registrar General's role under the Land Duties and Taxes Act ("LDTA") is to oversee deeds witnessing an actual sale and a transfer of property with a stated value. This is opposed to the situation for a compulsory acquisition under the Act, where what has to be valued for the purposes of compensation, is the amount that "*might be expected to realise on the open*

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[6] Section 3 of the Land Duties and Taxes Act
[7] Paragraph 27 of this judgment

market"[8] and is an assessment. The purpose under the LDTA is for the Government to levy duty on transactions relating to the sale and purchases of property. This is on the value of the property at the time of registration. The same wording, "*the value of the property at the time of registration*" is also found in section 3(1)(a)(ii) of the Registration Duty Act whereby the duty and how it is levied, is set out. The amount of tax which is paid by way of duty is dependent on the value of the property as set out in the title deed. Section 27A of the LDTA provides for this to be levied on the open market value of the property. It is to be determined in accordance to section 28 and by a decision of the Assessment Review Committee if relevant.

34. An under-declaration of the value of the property would therefore be beneficial to 'the payer of the duty in question and could lead to a lower amount being paid. It is to prevent this that section 28 provides for instances whereby if the Registrar General is dissatisfied with the value mentioned in any deed of transfer, for a written notice to be given (under the then applicable section prior to 2019). For the Registrar General to justify this, he has to base himself on actual sales which have taken place so as to be able to reject the sale price found in a deed under consideration. It is appropriate at this point to hark back to the remark in the case of **Société Blue Diamond** of the Honourable Judges that "*In fact if the use to which the property is reasonably capable of being put to in the future were to be taken into account, this might very well work to the detriment of the purchaser whose property might, in view of the potential for development, be assessed at a value higher than the actual market value at the time of sale.*" This clearly illustrates the difference between assessing the value of a property for the purposes of levying duty (under the LDTA) and for the purposes of evaluating compensation to a land owner who was not a willing seller of his property and has been subjected to a compulsory acquisition (under the Act). This is an important distinction.

35. For the purposes of the LDTA, it is the actual open market value[9] of the property at the time of the registration[10] which is relevant. This is different from assessing the market value of a subject property compulsorily acquired under the Act where the valuation of the property is for the purposes of compensation - the value being that if the interest in the land is sold on the open market by a willing seller, the amount which might be expected to be realised [11] at the date of acquisition.

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[8] Section 19(3) of the Land Acquisition Act
[9] Section 27A(a) of the Land Duties and Taxes Act
[10] Section 3 of the Land Duties and Taxes Act
[11] Section 19(3) Land Acquisition Act

36. We therefore find that the extract from **Société Blue Diamond** relied upon by the BOA[12] does not apply to cases for compensation before a Board of Assessment under the Act.

37. We now turn to the decision in **Melwood** with which we respectfully concur although, it needs to be dealt with caution as the legislation which applied is not similarly worded as our Land Acquisition Act. The Public Work Land Acquisition Act 1906 provides for a compensation estimation method. Notwithstanding this, we find that this judgment is persuasive on the issue of how to use post acquisition sales as evidence. In this context, we agree and adopt with the following extract found in the Privy Council judgment of **Melwood**:

> *Now it is plain that in assessing values for the purpose of compensation for resumption on compulsory acquisition a tribunal is not required to close its mind to transactions subsequent to the date of resumption: they may well be relevant or of assistance to a greater or lesser degree, …*

38. It is worth mentioning that in the case of **Melwood**, the court did not find any justification in ignoring a sale in June 1966 of well over $31,000 per acre as compared to a sale which occurred nine months earlier at a price of about $1000 per acre (the relevant date of compulsory acquisition being 11 September 1965 in the case).

39. It is also noteworthy that post acquisition sales evidence can be considered and exists as a valuation principle. This is illustrated and explained in the text book "Modern method of Valuation" (10th edition) (Shapiro, Keith Davies and David Mackmin), at page 238:

> *When valuations are made for certain purposes, e.g. for taxation or in connection with compulsory purchase for public or private undertakings, the valuation, although based on market value, may be regulated by statutory provisions as to the date at which the valuation is to be assumed to be made and as to the factors which may or may not be taken into account in making it. For these purposes, it is normally permissible to use post-dated evidence because the object of the exercise is to establish the correct value of the property at the relevant date and not what price a valuer might have placed upon a property in advance of that date. This concept of acceptable post-dated evidence has been accepted by the court and also in the privy council case of Melwood unit property Ltd V Commissioner of Main Roads. The same principle of utilising post-dated evidence has also been accepted in connection with rent reviews for the same reason. However, the further that the valuer moves away from the valuation date the more likely it is that the post-dated evidence will not be relevant because of changes in the market between the relevant dates.*

[12] Reproduce in paragraph 30 of this Judgment.

40. We find that in principle, a post-acquisition sales evidence may be relied upon to help reach the compensation. This will be based on assessing the open market value of an interest in land if sold by a willing seller[13], subject to the following considerations which are not necessarily exhaustive:

a) The sales should not be distant in time from the date of compulsory acquisition.

b) Any changes in the market between the compulsory acquisition and post dated sales should be taken into account (in a volatile market only a short time need pass before the evidence becomes unreliable)[14]

c) The post-dated sales evidence has to be based on actual sales which occurred by a willing vendor to a buyer (and not subject to any revision or assessment before the ARC) and is not any agreement made in court, ARC or Registrar General.

d) As no two immoveable are identical, the usual rules for direct comparison method would be used (location, physical state, purpose).

41. Having reached the conclusion that a post acquisition sales can be a comparable we now turn to the second stage required under ground 4 and examine the post-compulsory acquisition sales relied upon by the appellant's valuer. The sales evidence relied upon before the BOA by Mr Saddul, the valuer for the appellant, initially numbered 19 in all. However, for the purposes of ground 4, the details of what we find are the salient sales evidence which all concern agricultural land, are:

Date of sale	Location	land extent	Price per arpent	Distance from SN 15
09.12.10	Petit Camp	11,353.87	Rs. 6,000,142.84	1.7 km North West
15.02.11	Valentina	12,197.74	Rs. 5,017,537.27	1.8 km South West
13.12.12	Petit Camp	4,029.00	Rs. 6,254,685.11	50 m North
06.08.14	Petit Camp	24,282.79	Rs. 14,992,100.89	800m North West

42. Of interest in the above four examples, is the second one which occurred two weeks after the 29th of January 2011, the pertinent date to be considered for the purposes of compensation in the present matter. We are of the view that this sale in particular merited a close analysis by the BOA.

[13] Section 19(3) of the Act
[14] Page 37 Shapiro

43. We find that in the present matter under consideration that clearly the last two evidence of sales provided by Mr Saddul, cannot be relied upon in reaching a value of the subject property. One is a sale after two years whereas the other is just over 3½ years after the compulsory acquisition of SN 15. It can be inferred that 2 to 3 years down the line after the compulsory acquisition was published in the Government Gazette, that it became public knowledge that the TRV link road was in the pipeline, therefore causing speculation and pushing up prices of property in the immediate region.

44. We find that the sale of 15 February 2011 can be taken as a valid sales evidence as it is barely two weeks after the date of compulsory acquisition.

45. We therefore for the reasons stated earlier, find that ground 4 is well taken and succeeds on both stages.

Grounds 5 and 7

46. We find it appropriate to deal with these two grounds together as they both involve findings made by the BOA and which suffer from the same omission.

47. Ground 5 questions the figure put forward by Mrs Khedun-Sewoogobind of Rs. 2.5 million/Arpent which it is submitted, is contradicted by her own sales evidence which was in the region of Rs. 3.3 million/Arpent and which did not take into account "*the time and upward adjustment factors.*"

48. Ground 7 addresses the finding of the BOA which decided on a figure of 40% as injurious affection but failed to give the reasons why it did so.

49. With respect to ground 5, the award sets out the evidence of Mr Saddul and of Mrs Khedun-Sewoogobind regarding their respective valuation exercise. It then makes a finding which is in line with the conclusion of Mrs Khedun-Sewoogobind but does not explain why it does so. It simply makes a finding on the amount without any statement that it fully accepts the evidence of Mrs Khedun-Sewoogobind or agrees with it. The BOA does state that it does not rely on the sales evidence numbers 11, 12 and 13 and used by the appellant because these are post-compulsory acquisition sales. We, therefore, have the reason why the BOA did not adopt the value put forward by Mr Saddul but not the counterbalance as to why it accepts that of Mrs Khedun-Sewoogobind. The award is lacking in the explanation as to this particular finding.

50. For this reason, ground 5 is well taken and succeeds.

51. A similar criticism can be made with respect to the BOA's finding of 40% for injurious affection.

52. The BOA referred to the evidence of the two parties, the fact that Mrs Khedun-Sewoogobind had revised her assessment to 30% after taking into consideration the issue of accessibility to the land and to the figure of 50% put forward by Mr Saddul. Again, without giving any reason, the BOA only states: *Bearing same in mind, we are of the view that an allowance of 40% for injurious affection should be allowed in this case.*

53. We have to add that despite ground 7 of appeal correctly identifying that no reason as such has been provided by the BOA to conclude that 40% should be allowed, we have found after close examination of the evidence before the BOA, that there seems to be a dearth of "expert evidence" as to how the respective figures of 30% and 50% were reached by their respective parties. True it is that there is reference to another compulsory acquisition whereby the figure of 50% was reached as injurious affection. However, there is no technical explanation or expert evidence as to the exercise carried out to buttress both experts' respective figures. We are therefore aware of the situation the BOA found itself in having to reach a conclusion based on evidence which was very thin on the ground. We are not prepared to find that the finding of the BOA on this particular issue was perverse and ground 7 does not succeed.

Ground 6

54. We understand this ground to mean that the BOA did not properly consider the evidence of Miss Koo regarding structural changes which occurred after the Illovo deal of 2001 as referred to in the judgment of **Minister of Housing and Lands v Board of Assessment & Ors [2006 MR 101]**.

55. We have perused the evidence of Miss Koo as well as her report. Very briefly, her evidence was that there is a development potential for the appellant's land and she relied on the fact that it is in the middle of a strategic development area and undergoing fast changes. She referred to a number of developments such as the Cybercity, Trianon, Helvetia, SIT AUREA project amongst others. She emphasised that SN 15 is some four hundred metres from Highlands Rose and 200 metres from the residential morcellement of the Sugar Investment

Trust. She indicated that it would be a matter of time for the immense development potential of the subject property in the years to come.

56. It is not disputed that the subject property is 200 m from the limit of permitted development of the region of Belle Terre.

57. Here we find it appropriate to refer to the judgment of **Les Pailles Ltd v Board of Assessment** [2000 SCJ 39] which neatly summarises the legal principles that need to be applied as set out in the **Minister of Housing v Board of Assessment & Anor** [1988 SCJ 8]**:**

> *1. that the land had to be valued in terms of the prospects that it had or else as agricultural land, and there was no middle course;*
>
> *2. whether there was the certainty of a permit being granted; and*
>
> *3. what was the price which a willing seller might be expected to realise on the open market at the time of the compulsory acquisition, taking into account the development potential which is not merely speculative but which is reasonably expected to be realised in the short term.*

58. We have however found that if we were to accept that the BOA had erred in its finding on this particular issue, that the evidence of Miss Koo was of such a general nature that even though she referred to the development potential which was a matter of time, that no estimate was given, such that condition 3 as set out above in any event is not met. This ground cannot therefore succeed.

Ground 8

59. The appellant takes issue with the fact that the award did not cover the full costs claimed which arose out of the compulsory acquisition. Whilst we fully agree with the submissions of Counsel for the Ministry that section 18(7) of the Act provides that it is within the discretion of the chairperson to make "*such order as to costs as he thinks fit*", we find it fit to make the following observations. A Board of Assessment must bear in mind that a claimant/appellant finds himself the unwilling participant of a compulsory acquisition order and more often than not has to comply. The Act needs to comply with section 8 of the Constitution which provides for a person's right to protection from deprivation of his property and more especially section 8(1)(c)(i) and (ii). The claimant is entitled to challenge the amount of any compensation offered by the State. The claimant as an ordinary citizen, will not have the same resources or access to expertise that the State has. The claimant will necessarily incur initial expenses which may be onerous in order to challenge the compensation and these expenses must be duly proven. Therefore, any claim for

professional costs should be examined with the seriousness it deserves. The chairperson of a Board of Assessment obviously has to be wary of inflated claims especially when it is compared to the final value ascribed to the land acquired. A sense of proportionality has to be maintained in any professional costs being claimed when compared to the ultimate value of compensation awarded by a Board of Assessment.

60. Having found that grounds 4 and 5 of the appeal have succeeded, we accordingly quash the award of the BOA. Grounds 2, 3, 6, 7 and 8 having failed, are dismissed.

61. After anxious consideration as to whether this court needs to specify a figure for compensation, we are of the view that it is the specialist Board which should be given the task of assessing the compensation anew. For this purpose, we find it appropriate to reproduce the sales evidence used as comparisons by the government valuer:

Sales evidence	Date of Sale	Land extent		Price per arpent
		M^2	Arp	
1	14.06.06	24,227.21	5.74	1,100,000
2	23.12.08	4,220.76	1.000	2,200,000
3	20.04.09	8,863.62	2.10	3,500,000
4	26.03.10	4,431.81	1.05	3,238,095
5	26.03.10	4,431.81	1.05	3,238,095

62. The BOA should assess the compensation in the light of:

i) our findings and observations that the sales evidence of 15 February 2011 can be considered as a “comparable”,

ii) the distance of 200 metres from Belle Terre Village permitted development from SN 15,

iii) the different qualities of development found in respective sales evidence used,

iv) the steep price increases between sales evidence 1, 2 and 3 over time and leading to the compulsory acquisition,

v) close consideration of sales evidence 3, 4 and 5 provided by Mrs Khedun-Sewoogobind,

vi) the costs incurred by the claimant to be re-assessed.

63. The present matter is remitted to the BOA which heard the claim which is the subject of this appeal. If all the original members of the BOA are unable to consider the evidence already adduced before it, we order that the matter be heard by another Board of Assessment and the hearing be limited to the issues found in grounds 4 and 5 of this appeal which have been allowed.

64. With costs.

R. Teelock
Judge

J. Moutou-Leckning
Judge

14 August 2023

Judgment delivered by Hon R. Teelock, Judge

For Appellant: Mr M. Mardemootoo SA
Mrs R. Saha, of Counsel

For Respondent No. 2: Principal State Attorney
Ms N. Pem, together with Ms K. Dwarka-Davay, State Counsel