Privy Council Appeal No. 19 *of* 1977

Mukta Ben (d/o Bhovan) and Another – – – – *Appellants*

v.

Suva City Council – – – – – – – – *Respondents*

from

THE FIJI COURT OF APPEAL

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 12TH DECEMBER 1979

Present at the Hearing:

LORD WILBERFORCE
LORD EDMUND-DAVIES
LORD RUSSELL OF KILLOWEN
LORD KEITH OF KINKEL
LORD LANE

[*Delivered by* LORD RUSSELL OF KILLOWEN]

This appeal from the Court of Appeal, Fiji, involves an attempt by the appellant landowners to challenge under a number of heads the validity of a compulsory acquisition of 20 acres of their land for the purpose of the erection of an auxiliary power station by the respondents, the Suva City Council ("the City"). The purported compulsory acquisition was under the provisions of section 136 of the Towns Ordinance (Cap. 106) which is in the following terms:—

"136. (1) If a town council are unable to purchase by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire land the council may represent the case to the Governor in Council and if the Governor in Council is satisfied, after such inquiry, if any, as he may deem expedient, that suitable land for the said purpose cannot be purchased on reasonable terms by agreement and that the circumstances are such as to justify the compulsory acquisition of the land for the said purpose and that the said purpose is a public purpose within the meaning of the Crown Acquisition of Lands Ordinance he may authorise the council to acquire the land compulsorily.

(2) The provisions of the Crown Acquisition of Lands Ordinance shall apply to the compulsory acquisition of land by a town council under the provisions of this section, and in the application of the provisions of that Ordinance to such acquisition reference to 'the Crown', 'the Governor' or 'Government' shall be deemed to be reference to a town council authorised to acquire land under the provisions of this section and reference to 'The Director of Lands' shall be deemed to be reference to the Town Clerk".

Section 5 of the Crown Acquisition of Lands Ordinance, as applied by section 136(2) above, required the Town Clerk of the City, authorisation

for the compulsory acquisition having been given under section 136(1), to give notice "to the registered proprietors of the said lands and to the mortgagees, encumbrancees (sic) and lessees thereof . . . which notice may be in the form in the Schedule hereto or to the like effect." Section 7 of the Crown Acquisition of Lands Ordinance contained provisions for service of the notice, and section 7(4) additionally provided that "All notices served under the provisions of this Ordinance shall be inserted once at least in the Gazette and in a newspaper circulating in Fiji". In the instant case that last provision was not complied with. Section 6 of that last Ordinance enabled the [Town Clerk] to direct the yielding up of possession of the land within a period to be stated in the notice. Section 12 provided for the determination of the amount of compensation to be awarded for the land compulsorily acquired, matters to be taken into consideration including (expectedly) market value at date of notice of intention to take, damage due to severance at the taking of possession, and injurious affection. The present appeal is not concerned, directly, with quantum of compensation: it concerns only the contention of the appellants that the purported compulsory acquisition is and always was invalid and that therefore the City has trespassed on their land and still so trespasses and should be ordered to vacate it and the power station and other buildings which the City has erected upon it. Before leaving the Crown Acquisition of Lands Ordinance it is to be noted that section 17 imposes penalties for wilful hindrance or obstruction of the taking or retaining of possession of the lands pursuant to the Ordinance. Further, the Schedule to the Ordinance, giving the form of notice, is as follows:

> "Notice is hereby given that the following lands (describe lands, giving measurements and showing boundaries whenever practicable) are required by [the City] for public purposes . . . Any person claiming to have any right or interest in the said land is required within three months from the date of this notice to send to [the Town Clerk] a statement of his right and interest and of the evidence thereof, and of any claim made by him in respect of such right or interest."

The words in parenthesis in the form are in italics. The form continues (see section 6) with a notice of intention to enter into possession at the expiration of weeks: and adds a warning in terms of section 17. One point taken by the appellants is that the notice insufficiently defined the land.

The facts of this matter are in outline these. Land C.T.8316 is of somewhat irregular shape with its east boundary at High Water Mark of the sea and its west boundary at a riverside, comprising some 94 acres. It was owned by one Sukhichand and in July 1964 was contracted by the appellants to be bought from him, save a small portion near his house, possession to be given much later. From 1963 onwards the City was looking for a suitable site for an auxiliary power station to serve the City and possibly in due course to serve an area outside the then City limits. In October 1964 the City was in search of an area of some 50 to 70 acres for this purpose, partly depending on future expansion and partly on the nature of the terrain. The appellants offered to make a gift of 5 acres out of C.T.8316, and said they were prepared to negotiate for a sale of 30 acres. In April 1966 the City wanted the whole (or substantially the whole) of C.T.8316, and offered to buy it, no price being named. The appellants offered on 22nd April 1966 to sell 50 acres of the eastern portion at a price of £200 per acre, saying that they were unwilling to sell the whole since they contemplated subdividing the western end of C.T.8316 for industrial use subject to planning approval. (The whole of C.T.8316 was then in use by Sukhichand for dairy farming.) The appellants also offered access to the eastern end through the retained western end on terms that the City would build and maintain the road, which would of course serve also as access to any subdivision of the retained land.

There were then further conversations in which it appeared that the City then preferred land at the western end of C.T.8316 and on 13th May 1966 the appellants' solicitor (Warren) wrote to the City's solicitor (McFarlane)—a letter not in the Record—noting that the City now preferred the western end, offering 40 to 50 acres at that end at £300 per acre, the price having increased because they had intended to subdivide the western area: the letter stipulated that the City would provide without cost to the appellants a formed public road from the King's Road to the western end of the appellants' retained eastern land. In August 1966 the City wrote to say that £300 was very high and that the City considered that £110 was a fair and reasonable price, and offering that rate for 40 acres, the area to be subject to survey. The same letter said that the City would form the public road access to the appellants' retained land. The letter finished

> "If your client cannot accept the above price, then we are instructed to serve the appropriate notice of acquisition and proceed compulsorily to acquire and use the procedure set out in the Ordinance."

The appellants' solicitor (who also acted for Sukhichand) replied that £110 was quite unacceptable and unrealistic, and concluded:

> "As there seems to be no prospect of *further* negotiation on price, the [City] will presumably now proceed with a compulsory acquisition". [Emphasis supplied.]

A point sought to be made for the appellants in connection with section 136 of the Towns Ordinance was that there had been no negotiation for the acquisition of land by agreement: their Lordships do not accept that contention: negotiations may be protracted but they may also be brief, and their Lordships are content to accept the view of the appellants' solicitor which finds expression in his use of the word "further". The other matter that emerges from that letter is that the appellants had no objection to compulsory acquisition of up to 40 acres of their land, and were concerned only with price (if to be agreed) and compensation if not. At this stage the matter of acquisition had as noted switched from the eastern end (by the sea) to the western end (by the river).

On 8th September 1966 the City's solicitor applied by letter under section 136 of the Towns Ordinance for authority of the Governor in Council to acquire compulsorily approximately 40 acres for its new power station. Their Lordships observe at this juncture that there is no provision in the legislation for notification of such application to those interested in the land in question and no provision for the hearing of any objections. The only legislative requirements are in connection with the giving of notices after the compulsory acquisition has been authorised, and those requirements are directed solely to the later assessment of compensation. This is not of course to say that if there is ground for holding the authorisation to be invalid, the owner or owners cannot resort to the Court for the purpose of asserting that invalidity: but *prima facie* a lack of notification, or of opportunity to object in advance to the authorisation, is not, since none is required by the legislation, ground for asserting such invalidity. And the only reference in section 136 of the Towns Ordinance to inquiry by the Governor is to "such inquiry, if any, as he may deem expedient".

The application letter of 8th September 1966 pointed out the need for a new power station. It referred to negotiations with the appellants, who had in 1964 bought approximately 88 acres, including the 40 acres the acquisition of which was now sought, at approximately £90 an acre. It said that the appellants had asked for £300 an acre, which was considered highly excessive in view of that last mentioned fact and of a 1964 valuation by a Mr. Tetzner of adjoining property. It said that after consideration the City had offered £110 per acre, which had been refused, "and as the owners' solicitors say there seems no prospect of any further negotiations". It said that there was little likelihood of the owners agreeing to reduce their price much below

£300, and that the writers had advised the City having regard to knowledge of the land and of valuations in that area that £110 was then a reasonable market price. It added that the land was then used as a dairy farm. It stressed that the matter was of some urgency. It said:

> "the site would be used exclusively for the erection of buildings in connection with the power house and all purposes incidental thereto".

On 19th September 1966 this application letter was followed by questions from the Director of Lands, to whom the Governor in Council would turn for advice in such matters. He suggested that it would be appropriate for the application to be made under section 15 of the Suva Electricity Ordinance, whose provisions need not be investigated since that suggestion was not taken up. With a view however to an application under the last mentioned section the Director of Lands asked for a plan showing clearly the 88 acres acquired by the appellants in 1964 and the 40 acres required by the City, and also details of access to the 40 acres and of the access which would be available to the balance of the 88 acres—these matters not having been shown clearly on the sketch plan sent on 8th September. The Director of Lands also asked the following questions:—

"(b) what other sites, if any, Council has investigated for the new Power Station;

(c) full details of the reasons why City Council consider it necessary to acquire as much as 40 acres for a Power Station;

(d) if the 40 acres will not be wholly utilised to accommodate a new Power Station what other uses the Council propose to put the land;

(e) whether or not the relevant Rural Local Authority and/or the Town Planning Board has been consulted on Council's proposal to use this particular land for a Power Station, and if so, what were their observations;

(f) whether or not the Council has obtained an assessment of the value of the 40 acres from a professional valuer in terms of 1966 land prices, and if so, what this amounts to;

(g) whether or not any attempt has been made to reach an agreement on a compromised price somewhere between Council's offer of £110 an acre and owner's demand of £300 an acre;

(h) whether or not the owners have raised any objection to Council's proposal to use the 40 acres as a Power Station site. In other words, whether or not it is reasonable to conclude that the only point of disagreement between the parties is the matter of price to be paid for the land;".

The City's solicitors having referred these matters to the Town Clerk and, through him, to the City Electrical Engineer, received a letter from the former on 4th October, a copy of which was later sent to the Director of Lands. It described other sites investigated and found unsuitable for various reasons. Paragraphs 2 and 3 of the Town Clerk's letter of 4th October were as follows:—

> "2. An area of 40 acres was considered to be the minimum which should be obtained, to allow for future expansion, the provision of suitable storage areas for stores and fuel, suitable working areas for maintenance, and for running ancillaries such as water cooling towers etc., and adequate isolation of the station from existing and future development in the immediate vicinity of the area. Owing to the undulating nature of the topography of the particular area, the most suitable position for the station building is near the southern boundary of the portion of C.T.8316. The purchase of this site together with the portion of C.T.8315 required will permit the siting of the station

virtually in the centre of the whole block thus acquired. The section of C.T.8315 adjacent to the Samabula River would enable the installation of fuel oil handling and storage facilities, and permit fuel oil deliveries to be made by barge from Suva. This would be very much cheaper than using road transport.

It is possible that some living quarters may be provided on the perimeter of the area for the housing of breakdown and shift staff.

3. It was hoped that some industry could be established immediately adjacent to the station which could use waste heat in the form of steam. This could materially reduce the cost of the electricity supply".

There was then an interview between the Director of Lands, the Chief Electrical Engineer of the City, and the City's solicitor. On 26th October the City's solicitor wrote to the Director in answer to his letter of 19th September. He enclosed plans (which showed also a further 40 acres desired out of adjoining land C.T.8315) with proposed roads A and B. He said

"It was agreed with the owner of Title 8316 that if the [City] acquired the area out of the title a road would be provided to give access to the balance area".

The balance area at this stage was the eastern part of C.T.8316. In answer to queries (b), (c) and (d) in the letter of 19th September a copy of the Town Clerk's letter of 4th October was enclosed. On value, the letter referred to a 1964 valuation by Tetzner of adjacent land, also dairy land, at £75 per acre, and said that the latter had told the writer that the figure of £300 asked was ridiculous. The City's offer of £110 was considered by the City to be the ultimate price it could offer:

"The dairy farm land in that area is worth no more than £100 an acre today having regard to the use to which it is now put . . . It was pointed out to the vendors that the balance areas in the title [C.T.8316] would be considerably increased in value due to the [City] erecting a Power Station there and giving good road access, thus enabling the vendors to subdivide . . . There is no objection to the [City's] proposal to acquire by either owner, but each wants as much as possible, so that the only point of disagreement is one of price . . . As we pointed out to you the Electrical Engineer considers this is the most suitable site, and the [City] must have room for expansion and requires the land proposed as a buffer area . . . the proposed site . . . will be really in another decade more or less in the centre of Suva and its environs".

On 1st March 1967 the Governor in Council authorised the compulsory acquisition of 20 acres for a power station under section 136 of the Towns Ordinance (or rather under its then equivalent), having considered that 20 acres was sufficient for the purpose, and the City was so notified on 16th March 1967 by the Office of the Secretary for Fijian Affairs and Local Government. This was of course in relation to the west end of C.T.8316.

No further step was taken by the City on the basis of that authorisation The City then decided that it would prefer 20 acres at the eastern end by the sea: on 7th June 1967 the solicitor wrote on behalf of the City saying this and asking for authority to acquire such area, enclosing a sketch plan indicating a required access road to the area from the north through Native and Crown land to King's Road. The letter stated that the owner had already asked much more than the City was prepared to pay for what the land was worth: this presumably was a reference to £200 an acre which was the figure required for land at the eastern end. On 18th July 1967 the City was notified that the Governor in Council had on 5th July 1967 signified his approval under the relevant section to compulsory acquisition as requested: and also to compulsory acquisition of such land as is necessary "following either of the two routes proposed" to give access

to the new power station site from King's Road. The Record does not make it plain what were the two routes, nor when they were proposed: but the letter indicates that there were discussions between the Town Clerk and advisers of the Governor in which the City indicated that it would follow "the access route from King's Road through the Kinoya Subdivision". There is no mention of the access road serving also the balance land to the west.

On 25th July 1967 the City accordingly served notices of acquisition on the appellants and Sukhichand under the Crown Acquisition of Lands Ordinance (as applied), requiring possession within 8 weeks. The land required was referred to in the notice as land containing 20 acres at the eastern end of C.T.8316 "as delineated on the sketch plan hereinafter appearing". That sketch plan indicated an area, stated to be the 20 acres, to be acquired bounded on the east by what is obviously intended to be High Water Mark, on the north and south by those limits of C.T.8316 and on the west by a straight line apparently at right angles to those north and south boundaries. Of course it did not purport to be more than a sketch plan. It was not the result of a detailed survey, and the High Water Mark line was apparently taken for its purpose from the deposited plan of C.T.8316, since when it would have varied by accretions to the land. But a detailed survey of the then High Water Mark could suffice to place the west boundary with exactitude so as to contain 20 acres of C.T.8316 as added to by accretion.

It would appear that Sukhichand, then the registered proprietor of C.T.8316, in late September 1967 in connection with survey activities conducted on behalf of the City on the subject land, erected a fence on what he took to be the west boundary of the subject land and withdrew his cattle to the west thereof. On the 16th October 1967 the appellants were registered as proprietors of that part (the greater part) of C.T.8316 that they had agreed in 1964 to buy from Sukhichand, including of course the subject land. Meanwhile surveyors on behalf of the City were making a survey of the subject land. On 25th October 1967 Warren formally claimed compensation on behalf of the appellants. On the 24th October 1967, a plan, the result of the above survey, was submitted to Warren for signature by Naranji (attorney under power of the appellants), specifying both the subject land and the balance of C.T.8316. This was with a view to subdivision and registration. Neither the sketch plan with the notice of acquisition nor this survey plan indicated any access road either to the subject land or to the balance land on the west. This was queried on behalf of the appellants, and the solicitor for the City produced a locality map which indicated in colour a proposed access road from King's Road (to the north) to the subject land and also adjoining the balance land so as to afford access thereto. On that understanding Naranji signed the subdivision plan, which itself contained no indication of the access road: it would not of course do so, since the intended road would be outside C.T.8316 on Crown and Native Land. In fact that plan has not been used by the City. On 26th October 1967 Warren returned the plan signed and also the locality map (Exhibit "N"), enclosed with a letter saying that it was signed

> "on the understanding that it is the [City's] intention to establish access from King's Road to the 20 acre area by means of a public road as shown in red on the map returned herewith, portion of which will run along and touch the northern boundary of our clients' land for a distance of about 18 chains."

That letter was not answered. The *bona fides* of the City is not in issue, so that it is to be assumed that at that time the City did intend to procure that public road access to the balance land. But not long afterwards the City changed its mind, for what reason does not appear, a fact which has led to this extensive litigation in an attempt to challenge the validity of the

compulsory acquisition under a number of heads. In February 1968 a surveyor (Knuckey) who pegged out the centre line of the road from the north to the subject land was expressly instructed that it was nowhere to abut on the balance land, and as later constructed it does not. (When formerly there were negotiations for the acquisition by the City of land at the eastern end the suggestion had been that road access to the eastern end should be from a bridge over Naivula Creek through the western land, such road to be constructed and maintained by the City. That was quite different from the proposal in October 1967.)

According to Warren's evidence Naranji was told by Carter Rees & Associates (who were conducting all the survey work for the City) in May 1968 that the road to the subject land would not abut anywhere on the balance land and would not give access thereto. The idea then (internal to Naranji and Warren) was that in that case the compensation claim should be increased from £400 to £600 per acre. Warren agreed in evidence that probably he told McFarlane (solicitor to the City) in September 1968 that if no road access to the balance land were provided the compensation claim would be increased.

Their Lordships do not pause to add to the strictures made below on the City's behaviour in relation to its unexplained failure to provide public road access to the balance land in accordance with the locality map (Exhibit "N"), or some other such access. A feeling of some unease is perhaps reflected in the fact that the City has since undertaken to pay to the appellants in that connection a sum of $11,000, albeit subject to deduction of such costs of this litigation as are ordered to be paid by the appellants to the City.

Their Lordships turn now to the various and varied grounds upon which the appellants seek to set aside as invalid the compulsory acquisition, with the result (if they succeed) that the City has from the outset trespassed upon the appellants' land and erected and operated upon it the power station and auxiliary building, which no doubt would much enhance any claim for compensation if the City sought to start again.

(1) *The notice of acquisition lacked sufficient definition of the subject land.* Their Lordships do not accept that contention. It is no doubt true that there was power in the City to conduct a full survey of the 20 acre area to be acquired before operating the acquisition machinery, based upon the then situation of the High Water Mark boundary of C.T.8316: but their Lordships do not consider that the words in parenthesis in the Schedule to the Crown Acquisition of Lands Ordinance forbid in the case of an area such as this a notice of acquisition based upon a sketch plan. The notice made it clear that the subject land was to be 20 acres of C.T.8316 inward from High Water Mark, and that was capable of ascertainment. Evidence that the sketch plan, if treated not as a sketch plan but as a scaled plan, resulting from survey, contained more than 20 acres as the land to be acquired appears to their Lordships to be irrelevant. Nor are they persuaded that exactitude is required by the fact that a penalty may be incurred if there be resistance to or hindrance of the taking of possession of land of which notice of acquisition and taking has been given: such an offence must be wilful.

(2) *There was no power in the City to acquire compulsorily land outside the town boundaries.* This contention depended upon the language of the Towns Ordinance. (In this opinion reference is made to sections of the Towns Ordinance, though at the relevant time, before a Revision, identical provisions of an earlier Ordinance applied: hence reference in the documents to section 137 of the Local Government (Towns) Ordinance (Cap. 78) instead of to section 136 of the Towns Ordinance (Cap. 106)). The

argument was that section 132 in authorising a town council to construct and maintain public works necessary or beneficial to the town expressly said:

"whether within or without the boundaries of the town".

Further, section 133(1) authorised a town council to acquire by agreement, whether by way of purchase, lease or exchange, any land for the purpose of any of their functions—

"whether situate within or without the boundaries of the town".

But, it was said, when you come to compulsory acquisition under section 136 there is no such reference to topography. In their Lordships' opinion this contention is unsound. Section 136 has already been quoted, and in their Lordships' opinion it reads on to embrace all land which under the earlier provisions the Council is authorised to acquire, but is unable to do so, by agreement.

(3) *The City failed to publish the notice of acquisition* either in the Gazette, or in a newspaper pursuant to section 7(4) of the Crown Acquisition of Lands Ordinance (already quoted). The appellants contended that, notwithstanding that the notice was duly served upon them (and upon Sukhichand), this was a necessary requirement for the validity of the acquisition. In their Lordships' opinion this requirement of the legislation was not imperative in the sense that non-compliance stultified the process of compulsory acquisition: and having regard to the fact that notice of acquisition was duly given to the only persons interested in the land total non-compliance with the direction should not have that effect. In this respect their Lordships find themselves in accord with the views expressed in greater detail by O'Regan J.

(4) *The City had in addition to the actual power station built on the subject land housing for employees engaged in it.* It was suggested for the appellants that this was in excess of the authority for compulsory acquisition, and consequently either a circumstance vitiating that acquisition, or *pro tanto* a trespass. Their Lordships reject those contentions. In their Lordships' opinion the use of part of the subject land for such a purpose is obviously sensibly and reasonably incidental to the operation of a power station in that area.

(5) *Purchase by agreement on reasonable terms.* It was contended by the appellants that the authorisation for the compulsory acquisition was invalidated because in terms of the Towns Ordinance section 136 (earlier quoted) it was not correct to say that the condition precedent—that the City was unable to purchase the subject land on reasonable terms—to such authorisation had been fulfilled. Evidence was called to support the view that the value per acre was greatly in excess of the sum per acre which the appellants were asking: therefore, it was said, it was established that the City could have purchased the subject land by agreement on reasonable terms, and section 136 could have no operation. This argument is based upon the submission that that requirement of the section is simply objective. Their Lordships do not accept that submission. Here is a case in which there was a genuine difference of opinion in negotiation for purchase by agreement on the question of reasonable terms. The purely objective test would make the section virtually unworkable. In rejecting this submission their Lordships are content to accept the views of Gould V.P., which were never satisfactorily dealt with for the appellants. He said this:

> "Mr. Hughes' argument on behalf of the Council was that the intention of the section was to make available the compulsory acquisition procedure in any case where the two parties—landowner and Council—were unable to agree on what was a reasonable price. Such disagreements were of daily occurrence between would be vendors and

purchasers. The objective construction urged by the appellants would mean that if in the event of compulsory acquisition proceedings it were decided that the compensation payable should be as much as or more than the owner had asked for the land, the owner could have the whole proceedings set aside. This would entail that a Council would have to predict whether the land owner's asking price would be held to be reasonable. If the Council considered it would, of course the price could be accepted and section 136 becomes irrelevant. If the Council considered the asking price too high and was later shown to be wrong the proceedings could be rendered nugatory: such an interpretation would stultify the legislation. The alternative construction, that is, that the section applies if the parties are unable to agree upon what are reasonable terms, would render it workable".

(6) *It was contended in that last connection that the Governor in Council was misled by the City.* Their Lordships do not accept that contention. The City acted *bona fide* in its views as to a reasonable price per acre for the subject land. In the wisdom of hindsight it may have undervalued, as may according to the evidence also the appellants. The Governor in Council formed an opinion under section 136 on the point, and having formed an opinion decided upon authorisation. Their Lordships see no ground for treating the authority and the acquisition as a nullity under this head.

(7) *The failure to afford access to the balance land to the west.* In their Lordships' opinion this cannot be a ground for holding that the authorisation of the Governor in Council, and consequently the compulsory acquisition, was a nullity or is to be treated as such. The City at all stages in the negotiations intended to provide such access, and so informed the Governor's advisers. Assuming that that information was to be regarded as extending also to access to the balance land after the switch of the subject land from west to east in the application to the Governor there is no ground (granted the *bona fides* of the City) for thinking that the City did not then intend to provide access to the balance (western) land or misled the Governor on that point. Whether the failure to provide such access would affect the quantum of compensation, their Lordships do not pause to consider: but they are clearly of opinion that it cannot serve to deny the validity of the compusory acquisition.

(8) *The appellants contended that in all the circumstances the requirements of natural justice were not observed.* This, to be a valid point, must be such as to undermine the decision by the Governor in Council to authorise the acquisition. But in what respect can it be said that the Governor acted unfairly to the appellants? There is no obligation under the legislation to give to them notice of the application for authority to acquire, or of the representations made by the City in support of that application. Their Lordships fail to see how it could have occurred to the Governor that he was acting unfairly. It was argued that if the appellants had been informed of the representations that were being made they might have made criticisms or counter-representations on questions such as reasonable terms and the extent of the land required for the particular purpose. But nobody for the appellants gave evidence that they would (or even might) have then taken such steps: moreover they had been prepared for a much larger area than 20 acres to go: and finally it was plain that at that time they were content with (or resigned to) compulsory acquisition, the only matter with which they were concerned being the amount of compensation, a matter not to be dealt with by the Governor. Their Lordships reject this appeal to the principles of natural justice.

(9) *Twenty acres an excessive area for the purpose.* The next attack for the appellants on the validity of the compulsory acquisition was based upon the contention that 20 acres was greatly in excess of the area required for the establishment and operation of the power station. It was pointed out

that even with inclusion of the employees' housing and other ancillary buildings the area at present actually occupied is much less than the 20 acres to which the Governor on advice reduced the application for authority for 40 acres. Their Lordships recall once more that the City must be regarded as having formed a *bona fide* view of the acreage desirable: and it is obvious that for such a project a view may be formed of the need for future expansion, the nature of the terrain, and matters such as the desirability of a surrounding buffer area in which other development might otherwise lead to complaints of nuisance. Their Lordships do not accept that this complaint can serve to invalidate the compulsory acquisition. It was held by Marsack J. that the approval of the Governor in Council should be set aside not *in toto* but to the extent that it covers a greater area than that required by the City for the specific purposes for which that approval was granted. He thought that this might be to the extent of 15 acres, leaving the City with 5 acres. This might appear to be a reasonable solution but their Lordships do not consider it to lie within the powers of the Court. An alteration in the area to be taken could only be made by the Governor in Council.

(10) *The final challenge by the appellants is based upon the provisions of the Subdivision of Land Ordinance.* Their Lordships say at once that if and insofar as there may have been a failure to comply with the provisions of that legislation that cannot suffice to invalidate the compulsory acquisition of the subject land. It may be that the Ordinance does not apply to a case of compulsory acquisition. It may be that the City has done nothing that comes within the definition of subdivision, or that the City is not the "applicant" within that Ordinance. It may be that someone, including the City, has incurred penalties under section 18 of that Ordinance. It may be that the City has to take further steps before it can be registered as proprietor of the subject land. Their Lordships do not consider it necessary, or desirable, in this case to decide such matters, nor therefore to rehearse the facts which raise the points: for they are of opinion that if all the points hereunder were to be decided in favour of the contentions of the appellants it would still leave the appellants unable to assert, as they seek to do, the invalidity of the compulsory acquisition.

For the City it was contended that, if the appellants were right on all (or any) of the points taken for them, they would be estopped by their actions (or inactions) from contending for the invalidity of the compulsory acquisition. The arguments on this point were interesting and perhaps nicely balanced. Their Lordships have not found it necessary to rehearse all the facts relevant to that submission, and do not find it necessary to rule upon it.

Their Lordships will accordingly humbly advise Her Majesty that this appeal be dismissed with costs.

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