Clayton Comments

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PRIVY COUNCIL CLARIFIES THE PRINCIPLES FOR COMPULSORY PURCHASE COMPENSATION

On 15 August 2022 the Privy Council in *Estate of Dame Bernice Lake QC v AG of Anguilla* [2022] UKPC 33 gave an important judgment on compulsory purchase principles. The appeal concerned compensation for the compulsory purchase of land on Anguilla in 2003 to extend the runway at the airport.

In 2014 a Board of Assessment held a five day hearing and handed down judgment in April 2016. It decided that the land could be compulsorily purchased and awarded compensation of US 1.26m. The landowners appealed and in December 2018 the Court of Appeal ordered that compensation of US$19.5m be paid.

So the Government appealed to the Privy Council to challenge such a significant increase in the award of compensation. The landowners also launched their own appeal- as the Court of Appeal refused to uphold one of its claims for compensation. However, the key issue the Privy Council addressed was whether the Court of Appeal erred in law in reversing the Board's decision on compensation.

For many years Dame Bernice Lake and her estate had been interested in developing the land as a high end tourist resort. The Government decided to extend the existing airport runway. Negotiations broke down and the land was compulsorily purchased under Land Acquisition Act in 2003, the date it had to be valued.

The Privy Council accepted that land acquired under the Act must be interpreted in line with the Anguilla Constitution- following an earlier Court of Appeal decision by the landowners. The Privy Council ruled that compulsory purchase compensation included: (i) compensation for the value of the land acquired; (ii) compensation for the detrimental impact of the compulsory acquisition on land the landowners retained; and (iii) compensation for severing the acquired land from the original plot (assuming the two parcels of land together had a combined value greater than the sum of their parts).

The main dispute the Privy Council had to resolve concerned how the Board of Assessment valued the land, the "highest and best use" of the land as at 2003. The landowners claimed that that the land acquired had to be valued as an integral part of the combined plot for high end tourism. But the Government's valuer said that high end tourism development was unrealistic and valued the land based on sales of comparable land suitable for residential development around the airport. The Board accepted the evidence of the Government's valuer and rejected the landowner's approach.

The Court of Appeal reversed the Board's decision. Instead, it decided that the land should be valued as high end tourism as the landowners' valuer claimed, which hugely increased the compensation payable.

However, the Privy Council decided that the Court of Appeal's criticisms of the Board were unjustified. The legislation required valuing the land acquired on the hypothetical footing that it was placed on the open market as a distinct parcel of land by a seller who is willing to sell it as such. It, therefore, did not matter that the landowner was trying to preserve the acquired land as part of a

larger parcel for development. This conclusion followed English law under rule 2 of s 5 of the Land Compensation Act 1961, as interpreted in *Ramac Holdings Ltd v Kent County Council* [2014] UKUT 109 (LC) [62]. The Privy Council also accepted the AG's submission that the landowner's valuer failed to provide any independent evidence of the financial viability of high end tourism but, simply, relied on a sales pitch by the developer to attract financing.

The Privy Council, therefore, decided that the Court of Appeal was wrong in law in reversing the Board.

The Privy Council also rejected the landowner's appeal. The landowners argued that the Board of Assessment erred in accepting the Government's valuation evidence about the detrimental impact of the acquisition on land the landowners retained- and that the Court of Appeal, likewise, erred in dismissing its appeal on this point.

In reality, however, the landowners were asking the Privy Council to reverse a finding of fact where there had been factual findings, both by the Board and the Court of Appeal. The Privy Council stressed its long-established practice: an appeal on concurrent findings by the courts in the local jurisdiction will only be allowed in exceptional cases: see *Byers v Chen Ningning* [2021] 3 LRC 434 and *Dass v Marchand* [2021] 1 WLR 1788. Since the Privy Council could not see any for describing the appeal as exceptional, it dismissed the landowner's appeal.

This Privy Council judgment has wider implications. Similar legislation applied in the states and territories within the jurisdiction of the Eastern Caribbean Court of Appeal (Antigua and Barbuda, the Commonwealth of Dominica, Grenada, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines as well as three British Overseas Territories (Anguilla, British Virgin Islands, and Montserrat). The judgment will, therefore, be closely studied.

Richard Clayton QC successfully represented the Attorney General before the Privy Council. The judgment can be found at https://www.jcpc.uk/cases/docs/jcpc-2020-0023-0024-judgment.pdf