

**COMMONWEALTH OF THE BAHAMAS**

**IN THE SUPREME COURT**

**Common Law and Equity Division**

**2022/CLE/gen/00845**

**IN THE MATTER OF THE ACQUISITION OF LANDS ACT, chapter 353, Statute  
Laws of The Commonwealth of The Bahamas**

**BETWEEN**

**MG APARTMENTS LIMITED  
(A Company Incorporated pursuant to the Companies Act 2008)** **Plaintiff**

**AND**

**The Most Hon. Philip Davis QC  
(In his capacity as Minister responsible for Land)** **1<sup>st</sup> Defendant**

**The Hon Alfred Sears QC  
(In his capacity as Minister of Works)** **2<sup>nd</sup> Defendant**

**The Hon L. Ryan Pinder QC  
(In his capacity as Attorney General of the Commonwealth of the Bahamas)** **3<sup>rd</sup> Defendant**

**Before Hon. Mr. Justice Ian R. Winder**

Appearances: David Cash and Ian Nicholas Mitchell for the Plaintiff  
Kenria Smith for the Defendants

9 June 2022

**DECISION**

## WINDER, J

This is my decision on the application of the Plaintiff (MG) for interlocutory injunctive relief against the Defendants.

[1.] The nature of the relief sought MG, as prayed in the Summons filed on 30 May 2022, is for an "*Order that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants be restrained in the acquisition of the property until such time as the substantive determination of the Originating Action ...*"). The application by MG is supported by the Affidavits of Kimberley Bethel Gupta and Stephen Bethel II who are directors of MG.

[2.] The action was commenced by Specially indorsed Writ of Summons which provides as follows:-

1. The Plaintiff was at all material times a company incorporated under the Companies Act Ch 308 Statute Laws of the Commonwealth of The Bahamas. The Plaintiff was also at all material times the owner of ALL THAT piece parcel or lot of land situate in the Eastern District of the Island of New Providence comprising of more or less 24,083 square feet on the corner of Village Road and Parkgate Road" (the property).
2. By a Notice of Possession dated 24<sup>th</sup> October 2019, the Second Defendant claimed to appropriate, acquire and possess the property.
3. The Second Defendant published in the Gazette a declaration of Intended Acquisition, on 17<sup>th</sup> May 2019 which was dated 31 December 2018, declaring its intention to acquire 5000 square feet of the property.
4. Between 25<sup>th</sup> – 30<sup>th</sup> January 2022 notice of the compulsory acquisition of land was received by the plaintiff by email in contravention of the provisions of the Acquisition of Land Act which a s.6 says: (1) Whenever it appears to the Minister that any particular land is needed for a public purpose a notice to that effect signed by the promoters shall be published in the Gazette and posted on some conspicuous part of such land, but no such notice shall be published or posted unless the compensation to be paid for such land is to be paid out of public revenue or out of the funds of some statutory corporation. (2) Such notice shall state the following particulars — (a) the district in which the land is situate; (b) the particular purpose for which it is required; (c) its approximate area and all other particulars necessary for identifying it, and if a plan has been made of the land, the place where and time when such plan may be inspected; (d) an intimation that all persons interested in the land shall, within thirty days from the publication of the notice or the posting of the same, state in writing to the

promoters the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

5. In the premises the First and Second Defendants acquired the property in a manner that violated mandatory provisions of the Acquisition of Land Act Ch 252 and therefore the acquisition and subsequent possession by the 1<sup>st</sup> Defendant is null and void.

AND THE PLAINTIFF CLAIMS:-

1. A declaration that the notice of possession and acquisition of the property is null and void;
2. Damages for trespass;
3. Costs;
4. Such further and other relief as this Honourable Court deems just.

[3.] The Defendants oppose the application but have not filed any affidavit evidence in support of their position. Counsel for the Defendants says that their unfortunate position is due to the fact that the matter came on for hearing by virtue of a certificate of urgency and they had insufficient time to respond.

[4.] MG relies on Order 29 rule 1(1) of the Rules of the Supreme Court which provides:

(1) An application for the grant of an injunction may be made by any party to a cause or matter before or after the trial of the cause or matter, whether or not a claim for the injunction was included in that party's writ, originating summons, counterclaim or third party notice, as the case may be.

[5.] The Defendants say that there is no statutory jurisdiction in the Court to grant injunctive relief against the Crown and relies on Section 14 of the Crown Proceedings Act (CPA). Section 14 of the CPA provides:

14. In any civil proceedings by or against the Crown the court shall, subject to the provisions of this Act, have power to make all such orders as it has power to make in proceedings between subjects, and otherwise to give such appropriate relief as the case may require: Provided that —

(a) where in any proceedings against the Crown any such relief is sought as might in proceedings between subjects be granted by way of injunction or specific performance, the court shall not grant an injunction or make an order for specific performance, but may in lieu thereof make an order declaratory of the rights of the parties; and

(b) in any proceedings against the Crown for the recovery of land or other property the court shall not make an order for the recovery of the land or the delivery of the property, but may in lieu thereof make an order declaring that

the plaintiff is entitled as against the Crown to the land or property or to the possession thereof.

(2) The court shall not in any civil proceedings grant any injunction or make any order against an officer of the Crown if the effect of granting the injunction or making the order would be to give any relief against the Crown which could not have been obtained in proceedings against the Crown.

[6.] I accept that there is some merit in the submissions of the Defendants. It is not disputed that this is a proceeding against the Crown. Section 14 of the CPA provides that the Court may not grant injunctive relief against the Crown but rather where the circumstance are such that, but for Section 14 an injunction would have otherwise been appropriate, a declaration may issue in lieu of an injunction.

[7.] Counsel for MG argued that Section 14 of the CPA ought not to apply to cases such as this one involving the acquisition of land on the view that such matters are not proceedings between subjects. Respectfully, it would seem that the reference is not to the nature of the proceedings but to the nature of the order which the court may make. MG seeks to restrain the Defendants, until trial, from proceeding with the acquisition of the property, alleging that the notice of possession and acquisition are null and void. This is no different from any application between subjects seeking to restrain one or the other from doing something.

[8.] There is no basis to presume that parliament intended to restrict the Crown from being restrained in ordinary actions but not in actions peculiar to the Crown such as Acquisition of Land claims.

[9.] Section 14 of the CPA does however appear to relate to final injunctions rather than interlocutory injunctions such as being sought here. My view is based upon the nature of granting declaratory relief and that it would be impracticable for a declaration to be made by the Court on an interlocutory basis and prior to a final determination. The Court cannot declare a state of affairs where the evidence has not been finally considered and assessed.

[10.] If a final injunction cannot be granted, it would seem impracticable that an interlocutory injunction could be used to maintain the status quo until a trial which will not result in a permanent restraint. In any event, a final injunction is not sought in MG's Statement of Claim. In my view, such a contention, that the state could be permanently restrained in the acquisition of that property, where MG accepts that the property is required for a public purpose, is untenable. Even if the instant acquisition process is flawed, the state still has a constitutionally recognized power to exercise eminent domain provided the constitutional provisions are properly complied with and compensation made.

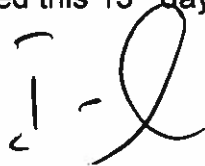
[11.] Even if I was satisfied that MG could, in law, obtain injunctive relief against the Defendants I was not satisfied, on *American Cyanamid Co v Ethicon Ltd.* principles, that the balance of convenience lied with MG or that damages would not be an adequate remedy. MG accepts that even if the process is flawed the state, having invested significantly as it has in the Village Road Improvement Project, will correct any error and nonetheless continue to pursue the land which is a necessary part of that project. Albeit not provided in any affidavit, Counsel for the Defendants assert from the Bar table, that there is a considerable expense associated with any delays in the construction of the road.

[12.] The Defendants do not seek to acquire all of MG's property on Village and Parkgate Roads. The acquisition relates only to 3,115 square feet of property along the northern and eastern boundaries of MG's property. It cannot be said that the damage which MG may sustain is irreparable. The only physical structure impacted is a boundary wall which certainly can be replaced. MG has surveillance cameras which are also impacted, and which can also be relocated. In fact, MG has already had the property appraised by LX Bahamas in an appraisal dated 19 March 2022. The appraisal values the acquired property at \$85,000.

[13.] I accept, as does the Defendants, that MG would require time to secure its property presently situated on the land being acquired as well on its other property.

[14.] In the circumstances therefore, I must dismiss MG's application for interlocutory injunctive relief. I expect that in addition to the week already afforded to MG by the Defendants to ready itself for removal of the boundary wall, additional reasonable time would be afforded if needed to MG.

Dated this 13<sup>th</sup> day of June 2022

A handwritten signature in black ink, appearing to read 'I. R. Winder', with a large, stylized flourish at the end.

Ian R. Winder

Justice