REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV 2008-03473

BETWEEN

VIDA BALKISSOON AND ORS

Claimants

AND

LAND SETTLEMENT AGENCY

Defendant

CV 2009-00098

BETWEEN

LALITA ARJOON AND ORS

Claimants

AND

THE LAND SETTLEMENT AGENCY

Defendant

CV 2009-1386

BETWEEN

BHISHAM SINGH & ORS

Claimants

AND

THE LAND SETTLEMENT AGENCY

Defendant

CV 2009-02059

BETWEEN

VOLETA REED AND ORS

Claimants

AND

THE LAND SETTLEMENT AGENCY

Defendant

Before The Hon. Madam Justice C. Gobin

Appearances:

Mr. M. Seepersad for the claimant
Mr. K. Garcia instructed by Mr. R. Thomas for the defendant

JUDGMENT

Background

1. The claimants in this action have all been occupants of the several parcels of land identified in the statement of case. These parcels were all formerly owned by Caroni 1975 Limited. By Act of Parliament in 2005, the former Caroni lands were vested in the State. The several subject parcels are all located in either of two areas, Windsor Park and Esperanza Village both of which are in California.

2. The defendant (the LSA) is a corporate body established under S.5 of the State Land (Regularisation of Tenure) Act Ch. 57:05 (the SLRT Act). It is a public authority.

3. On the 17th July 2008 it is alleged that the defendant unlawfully entered lands occupied by claimants No.57 to 66 inclusive and demolished their homes. In its defence the defendant denies it unlawfully entered these plots of land. As to the remaining claimants, they have all been notified of impending eviction either orally with alleged accompanying threats, or in writing, by letters issued on the letterhead of the defendant and signed by its Chief Executive Officer, Mr. Ossley Francis. In the case of these claimants, the defendant says the demands contained in the letters are not unlawful.

The Main Question

4. In the course of the proceedings the parties formulated the following question for consideration and determination as a preliminary issue.

> Whether the defendant has the legal authority to dispossess the claimants, whether under the State Land (Regularisation of Tenure) Act Ch. 57:05 (The SLRT Act) the common law, or by cabinet minute or as agent of the state (the title owner of the lands).

5. It is agreed that all the plots occupied by the claimants are in fact State lands. The contents of the cabinet note too have been agreed by the parties. With respect to the following claimants, Bisham Singh, Arnold Ragoonanan, Elton Springer and Roxanne Patterson, there is no issue that their plots are located within a designated area under the SLRT Act. In the case of Oma Cindy Mohan, there is some question as to whether hers might so fall. The lands occupied by all the remaining claimants do not fall within a designated area under the SLRT Act. The parties agree that whether the lots within or outside of a designated area does not significantly affect the question I have to decide.

A point on pleading

6. Before I proceed to rule on the central issue in the case, that is, the defendant's authority to evict alleged squatters if any, I shall deal with that part of the submission of the defendant in which it contends that it might be premature to determine the issue of its authority at this stage because "there is nothing pleaded or not pleading" which will preclude evidence from being led as to whether the LSA exercised its powers under S 10 (a) or 10 (d) of the SLRT Act.

7. The contention appears to be that the purpose for which the LSA ejected the claimants will become clear from the evidence at the trial. The defendant argues that it is only at that stage after hearing the evidence that the court will be properly placed to determine whether the ejectment in the case of some of them and threats to eject the remaining claimants fall within S.

10 (l) of the SLRT Act. It is convenient to state here that subsections (a)-(k) of section 10 of the Act provide specific powers of the defendant. Section 10 (l) provides a general power to do all such things as are incidental or conducive to the carrying out of its functions as prescribed in the foregoing sections and under the SLRT Act generally.

8. I reject this part of the defendant's submission purely on a point of pleading. The amended statement of case filed on January 19th 2009 specifically alleged at para. 5(a) that the defendants on July 17th 2008 had **wrongfully** (emphasis added) entered the claimants' lands. Further, it was alleged the letters demanding possession and threatening demolition were issued under the hand of the defendant's CEO, Mr. Ossley Francis. Paragraph 14 specifically pleaded that the defendant **had no lawful rights of ownership to the claimants' lands and to lawfully eject, evict or demolish their homes**. (emphasis added)

9. Further paragraph 15 specifically pleaded **that the defendant as a creature of statute, has only such powers as are circumscribed by the Act. The claimants specifically indicated too that they would rely on the Act in support of their claim as to the illegality of the defendant's actions**. (emphasis mine)

10. The defendant's pleaded response on this specific issue of its jurisdiction began at paragraphs (4) and (5) of the defence with **a bare denial** as to the unlawfulness. At para. (10) it repeated this denial and went on to indicate the crux of the defence which was the alleged **authorization by the State as its agent to exercise its common-law powers** (including the power of a land-owner to evict trespassers) **and specifically on its appointment as agent contained in a Cabinet Note No. 1095 of May 11th 2006**.

11. The belated attempt through submissions at this stage to introduce an issue of the purported exercise of powers of the defendant's under S.10 of the SLRT Act must be resisted as that issue is irrelevant to the defence as pleaded. The defendant will not at a trial be allowed to lead any evidence in support of an allegation which was never pleaded. Other than bare denials as to the illegality of its actions, it seems to me that the only issue raised on the defence is whether the Cabinet Minute on which the LSA relies is capable of being construed as some kind of authorization for its actions as an agent of the State. I therefore find that there is no merit in a suggestion that it is premature to rule on the preliminary issue on the basis that evidence will be led which might throw some further light on the defendant's case.

12. Similarly, insofar as the defendant's submissions on the issue of agency attempt to expand (in other words to amend) the defence to include what appears to be some reliance on the previous conduct of the State in relation to the LSA (see para. 20 (b) of the submission), for the same reason which I have stated above, I consider them to be irrelevant. If the defendant intended to rely on the previous conduct of the State, then that alleged conduct ought to have been pleaded with some particularity. This was not done. I shall also decline the invitation to take judicial notice of the relationship between the State and the defendant. This would be wholly inappropriate as I do not consider this to be a matter of common knowledge or notoriety. Any relationship to be inferred from the State's previous conduct ought to have been pleaded. Had this been done it may well have been necessary at an earlier stage to consider whether the State should not have been joined in the action. We are now well beyond that.

The Cabinet Minute

13. I return to the main question on the pleading. It appears to be a narrow one. Did the Cabinet Minute authorize the actions of the defendant and the dispossession of the claimants? The minute was attached to the defence and since it is so central to it I shall reproduce it in its entirety.

> CABINET MINUTE NO.1095 OF MAY 11, 2006
>
> Implementation Strategy for the Containment of Squatting
>
> Note No. (2006) 12, together with the recommendations of the Finance and General Purposes Committee, was considered.
>
> Cabinet agreed:
>
> (a) **to accept the revised implementation strategy of the land Settlement Agency (LSA) for the containment of squatting in Trinidad as detailed in Appendix 1 to the Note**; (emphasis added)
>
> (b) to the employment, on contract, of the under-mentioned staff in the Agency for a period of two (2) years with effect from the date(s) of assumption of duty, on terms and conditions to be negotiated with the Chief Personnel Officer and approved by the Minister of Housing: -
>
> Three (3) Security Officer Supervisors
> Seven (7) Security Officers
> Three (3) Administrative Support Clerks;
>
> (c) that the expenditure to be incurred in respect of (a)and (b) above be met from Head 36 – Ministry of Housing, Sub-Head 06 – Current Transfers to Statutory Boards and Similar Bodies, Item 004 – Statutory Boards, Sub-Item 54 – Land Settlement Agency.
>
> Cabinet noted:

(1) the under-mentioned key features or objectives of the revised strategy for squatter containment:

- the implementation strategy would be seen to, and in effect, visibly reduce and eradicate the incidence of squatting on all State lands including those "additional lands" that have been now brought within the control and management of the LSA.

- the strategy implemented would be a practical one with longevity and continuity.

- through existing legislation, in conjunction with the enactment of proposed amendments and additions thereto, the LSA would effectively and legitimately operate within the statute through which it has been created.

- the establishment of an efficient and economical island-wide network for squatter containment that includes the monitoring of all State land and the demolition and removal of illegal structures on State land.

(2) that in order to implement its vision, the LSA proposes to establish three (3) regional offices (North, South and Central) to facilitate the containment functions of the Agency, as well as a formal co-ordinated network of Government agencies to assist in the monitoring and reporting of squatting activities.

Secretary to Cabinet

The note ended there.

14. At paragraph 19 of its submissions, the defendant concludes that:

> "Cabinet's express approval of the LSA's revised implementation strategy amounts to an express authorization to the defendant to eject squatters from all State Lands".

I have closely read and re-read so much of the note that was produced and I have found it impossible to make that leap. To my mind, it just does not follow and I must respectfully disagree with the conclusion of counsel for the defendant. If anything, the note discloses that the defendant recognized the need to operate legitimately within the SLRT Act and one may go further to infer that it recognized the need for amendments, some of which had already been proposed, as well as additions to those, in order to effectively and legitimately implement aspects of the LSA's revised strategy.

15. This finding should be sufficient to determine the preliminary question insofar as it relates to matters arising on the pleadings and more particularly on the effect of this Cabinet Note. However, since the parties did agree to include a wider question for my determination and since the issue affects a matter of public importance I shall indicate my ruling on the remaining matters.

<u>The Role of the Commissioner of State Lands</u>

16. A necessary question which arises is, would the defendants' position have been improved had the terms of the Cabinet Minute more explicitly authorized the defendant's actions. The answer I have concluded is that it would have remained unchanged. I have been persuaded by the argument of counsel for the claimants, that Cabinet could not authorize the LSA to exercise what are the State's exclusive rights to dispossess the claimants in the face of the express provisions of the State Lands Act Ch.57:01.

17. Section 4 (1) of the State Lands Act Ch.57:01 expressly provides for all rights of ownership in State Lands to be exercisable by the President of The Republic. Section 4 (2)

further allows the President by Order to empower the Commissioner or any Deputy Commissioner of State Lands to exercise any of the rights exercisable by him under S.4 (1). Section 6 (1) vests the management of all State Lands in the Commissioner and charges the office holder with the prevention of squatting.

18. The State Lands Act further provides at Section 20 for summary proceedings before any magistrate to secure possession of State Lands to the Commissioner. This provision too recognizes the latter as the person properly authorized to act as owner in relation to State Lands. The Commissioner is the agent of the State designated by law to act on specific matters relating to squatting. The office holder is a public servant and part of the executive and his actions would necessarily be guided by the policies and directives of government. But all authorised actions must be taken through him, in his name and under his authority.

19. In its reply to the claimant's submissions the defendant urged that the relevant sections of the State Lands Act which confer power on the President and the Commissioner should not be construed so as to exclude the exercise of those very powers by persons other than those specified under the Act. I reject this suggestion. Where a statute clearly and directly authorizes identifiable persons to exercise specific power or where it confers a duty on them, an interpretation which allows for persons other than those specifically identified and authorized to assume responsibility for or to do the very acts contemplated, would clearly be inconsistent with the express language of the Act. The State Lands Act is a special Act dealing with power and responsibility in relation to lands owned by the State. A Court cannot properly ignore the express provisions. Indeed, it must have been considered necessary and sensible to grant specific power and responsibility for State Lands to the holders of the offices specified so as to avoid the

uncertainty, chaos and lack of accountability which would result if such rights were left to be exercised by any number of unidentifiable persons.

20. Section 52 of the Interpretation Act Ch.3:01 does allow for delegation of the functions of any public officer (and this must include the Commissioner) to any other public officer or officers by ministerial order. But this provision is not relied upon in this case, and the defendant could hardly fall within the definition of a public officer. To return to the point in this case, a Cabinet Note cannot authorise the usurpation of the power of the Commissioner of State Lands.

Can the State resort to self "the common law right to self-help"

21. It is not necessary for the determination of the question before me to express a firm view as to whether the relevant sections of the State Lands Act override the State's "common law right to self help" which has been asserted by the defendant and I would be reluctant to conclusively decide such an issue without the fullest assistance of counsel and in particular of the counsel for the Attorney General. But I have briefly traced the history of the officer of the Commissioner of State Lands with a view to better understanding this alleged right and am left in doubt as to whether the enjoyment of any of its rights in property by the State can properly be said to be rooted in the common law.

22. In England, prior to 1829 the Crown exercised prerogative power in relation to its rights in its lands. The Crown Lands Act 1829 first established the office of the Commissioner of Woods, as the entity to hold and manage Crown Lands. Under this Act, the effect of which was

to delegate its sovereign power to a public official, the Commissioner of Woods was authorized and empowered inter-alia to require occupiers of Crown Lands to quit and deliver up possession. The source of this power became statutory. By subsequent amendment to the Crown Lands Act, the title of Commissioner of Woods was changed to Commissioner of Crown Lands in or about 1924.

23. In our jurisdiction the Crown Lands Ordinance of 1918 vested power in the administration and disposal of Crown Lands exclusively in the Governor General as Intendent of Crown Lands. It also introduced the office of Sub-Intendent of Crown Lands. This is the predecessor to the post of Commissioner of State Lands. Section 6 (1) of the Ordinance charged the sub-intendent inter alia with the prevention of squatting. Section 21 of the Ordinance provided a procedure for the recovery of possession against squatters by the Sub-Intendent of State Lands or a Warden. The SLA in its present form establishes the public service post of the Commissioner of State Lands to replace the Sub-Intendent of State Lands. It would seem to me that the operative statutory provisions under the SLA do now, as did the predecessor provisions in both the English and local legislation, "provide an exhaustive statutory code" for the recovery of possession by the State through the designated officer, the Commissioner. Indeed any appeal to analogous common law rights of the State or formerly the Crown to self help seems inappropriate.

24. The enactment of the Crown Lands Act of 1829 in England pre dated the reception of English law in Trinidad. This is generally acknowledged to have taken place in 1848. I am inclined to the view that the 1829 enactment presented a code which prescribed how the rights of the Crown Lands in relation to property would be exercised from then on. In effect the royal

prerogative powers of the administration and control of Crown Lands were surrendered to what was to become the executive.

25. For obvious reasons at the time when English Law was received in Trinidad in 1848 the Crown Lands Act 1829 would have been inapplicable to Trinidad. The enactment in this former colony in as early as 1918 of the Crown Lands Act, provided a complete and exhaustive code to deal with the exercise of power by the Crown, then lately the State, in relation to its lands in this country. I am inclined to the view that outside of this statutory source, there is no law which authorizes any action to recover State lands. I have found support for this approach to the effect of a statute on prerogative rights to property in the judgment of Chief Justice Wooding in the case of ***Attorney General v Maharaj and Maharaj 1966 Vol. II WIR 53***.

26. The SLA as did its predecessor, regulates the conduct of the State. It provides for a civilized (if outdated) system to treat with squatters. It contemplates access to a judicial process. It would be entirely inconsistent with the philosophy of this legislation (now almost 100 years old) if some residue of prerogative power or if some alleged common law right, allowed the State with all its might and under cloak of using necessary force to trample upon people (even squatters) and destroy their homes. A recognition of any such power would be retrograde.

27. But I am wrong on this and if the State is entitled to take any steps in relation to squatters (on lands which are not designated lands under the SLRT) as I have said before, such action must be taken by or in the name of, the Commissioner of State Lands. If the Commissioner were to choose to resort to "self help", if indeed this were permissible, he or she would no doubt be entitled to call for the support of law-enforcement agencies to provide appropriate lawful

assistance and any other persons to provide services do such things as are necessary to secure possession.

Can the LSA evict the claimants?

28. Even in such circumstances my understanding is that the law would not permit the involvement of this defendant. This is because the LSA is a creature of statute. Its powers are prescribed by the SLRT Act. It can exercise its limited jurisdiction only in areas designated in accordance with that statute. It cannot through a claimed relationship of agency purport to lawfully exercise any powers other than those prescribed by S.10 of the SLRT Act. I find support for this view in S.29 of the SLRT Act which provides as follows:

> "A State Agency may permit the Agency or the Assembly to enter upon its land to carry out any work referred to in section 10 for the purpose of regularization under this Act".

This expressly limits the scope of any agency arrangement between any other State Agency and the defendant. It clearly excludes the kind of agency agreement alleged by the defendant in this case, that is one which authorizes the defendant to exercise the wider powers in relation to State Lands including eviction.

29. Further, having considered the submissions I find that even in those designated areas assigned under the SLRT Act, the LSA has no jurisdiction to evict squatters. This is because the SLRT Act at S. 27(2) clearly recognizes and preserves the jurisdiction of the Commissioner of State Lands to seek delivery of possession in circumstances where squatters fail to comply with the direction of the Minister or the Tobago House of Assembly. This would seem to imply that even where the LSA lawfully exercises its power under S. 10 of the SLRT Act, directives to

relocate can only come from the Minister or the Assembly as opposed to the LSA. In the face of this provision I cannot read into S. 10 (l), a power of the LSA to evict or enforce relocation even in designated areas under the SLRT Act.

Conclusions

30. This decision gives the claimants no right in the lands they occupy. It simply decides that the LSA in actually evicting of some of them and in threatening to evict the remaining claimants, acted unlawfully, in that it purported to exercise a power that it did not have.

31. The pre-amble to the SLRT Act recites the very laudable objectives of government in its policy toward squatter regularisation in designated areas. It recognizes that squatting is a phenomenon that has existed for well over one hundred years. The policy which underlies this piece of progressive legislation reflects a concern for the needs of citizens especially the poorest among us for basic necessities of shelter and family life. The Act provides a statutory framework for the implementation of this humane policy. It does not provide a carte blanche for squatting.

32. Unless the policy is maintained and implemented within the limits of the law, it can easily and perhaps deliberately in some instances be misinterpreted as an excuse for illegal land grabbing. The responsibility to enforce the law lies with the Commissioner of State Lands and the executive. A failure to enforce the law only provides encouragement to break the law. If the unregulated proliferation of illegal squatting communities continues to be facilitated through the omission or neglect of those in authority to act, the consequences for our environment, for our overburdened infrastructure and for social order will be devastating.

33. It may well be that the role of the Commissioner of State Lands in relation to squatting needs to be revised. The summary procedure for possession against squatters stipulated by S 20 of the SLA may need to be reconsidered in the light of present day realities including the strain on the judicial system in the Magistrates Courts. On the other hand it may be that all that is necessary is for the Commissioner's office to be provided with the proper infrastructure, personnel and resources, and to be equipped with the machinery necessary to efficiently manage, monitor and prevent illegal squatting. But these are matters for Parliament and the executive.

Disposition

34. The Court rules for the claimants on the preliminary legal issue. This ruling effectively determines this case in the claimants' favour. There shall be judgment for the claimants against the defendant. Issue of cost and ancillary matters deferred to February 2nd February at 10:00a.m.

Dated this 28th day of January 2011

CAROL GOBIN

JUDGE