Privy Council before Lord Browne-Wilkinson; Lord Nicholls of Birkenhead; Lord Hoffmann; Lord Clyde ; Lord Hutton. 11th February 1998

**JUDGEMENT Delivered by Lord Clyde]**

The appellant owned land known as the Belle Vue Pleasure Park in Jersey. The States wished to acquire it. On 19th September 1991 the appellant offered to sell the land to the States for ,6,750,000. On 14th November 1991 the States offered to purchase it for ,5,000,000. That offer was not accepted and the matter had to proceed by way of a compulsory acquisition. In the course of the preliminary procedures in accordance with Article 4(3) of the Compulsory Purchase of Land (Procedure) (Jersey) Law 1961 the respondent wrote to the appellant on 13th November 1992 offering the sum of ,3,350,000 as compensation. On 11th December 1992 the Greffier of the States applied to the Royal Court under Article 8 of the Law of 1961 to have the question of compensation referred to and determined by the Board of Arbitrators. On the same day the Royal Court made an order vesting the land in the respondent (which was then known as the Island Development Committee) for the States and Public of the Island and also granted an order under Article 8 of the Law that the compensation should be determined by arbitration. A lengthy hearing before the Board of Arbitrators followed thereafter. The appellant claimed that the value of the land was ,14,449,078. The respondent contended for a figure of ,2,375,000. Eventually the Board determined the value of the land at ,4,900,000. At the end of its award the Board stated that *"the law does not empower us to make any ruling as to the costs of either party"*.

1. The appellant then lodged a claim before the Royal Court seeking an order that the respondent should pay to him the full amount of the costs and expenses properly incurred by him in the arbitration proceedings together with interest. In the alternative he sought an order that his costs and expenses fell to be determined by the Board under the provisions of Article 9(1)(g) of the Law and that the Board should be reconvened for the purpose of such determination. The matter came before the Deputy Bailiff who on 13th March 1996 held that the appellant was entitled to the legal and other costs properly incurred by him in the arbitration proceedings on an indemnity basis, such costs to be taxed by the Judicial Greffier if not agreed. The Deputy Bailiff proceeded upon Article 14(2) and did not find it necessary to deal with the alternative argument under Article 9(1)(g). The respondent then appealed to the Court of Appeal and on 1st November 1996 the Court of Appeal allowed the appeal, holding that neither under Article 14(2) nor under Article 9(1)(g) was the appellant entitled to his costs in the arbitration.
2. It is necessary at this stage to quote the relevant provisions of the Law. Article 14 is headed "Fees and Expenses". It *provides as follows:-*

   *"(1) There shall be paid to the members of the Board fees in accordance with such scale as the States may by regulation determine.*

   *(2) The fees of the Board and all expenses incurred in proceedings under this Law shall be paid by the acquiring authority."*
3. The 1961 Law superseded an earlier Law on compulsory acquisition, namely the Compulsory Purchase of Land (Procedure) (Jersey) Law 1953, which it repealed. The 1961 Law has been the subject of certain amendments. The only Law to which their Lordships were referred in that connection was the Compulsory Purchase of Land (Procedure) (Amendment No. 5) (Jersey) Law 1994. That has introduced a separate Article 14A regarding the costs incurred by a party, but their Lordships do not look to that as a guide to resolving the present problem of construction.
4. The terms of Article 14(2) are clearly open to differing interpretations. The Court of Appeal founded very substantially on the differences between the terms of the 1961 Law and its predecessor, the Law of 1953. Under the regime provided by that Law compensation fell to be assessed by official arbitrators. Article 7(3) provided that:- *"There shall be paid to a person acting as official arbitrator remuneration in accordance with such scale as the States may by regulations determine."*
5. Article 13, headed "Costs" provided *"The costs of all proceedings under this Law shall be paid by the acquiring authority"*. It was not in dispute that under this Article the former owner was entitled to his costs. The question then arises whether the Law of 1961 effected a change so as to repeal and not replace the earlier entitlement of the original owner to his costs.
6. Their Lordships are not prepared to accept that the intention of the States in the Law of 1961 was to make so radical a change. Neither the Report which accompanied the Bill nor the title to the Act of 1961 throw conclusive light on the problem. But it might well have been expected that if such a change had been intended the Report would not have confined itself to stating that the purpose of the amended Law was to substitute a Board for the single arbitrator for the determination of questions of disputed compensation. And the title of the Law of 1961, in describing it as a Law to re-enact, with amendments, the Law prescribing the procedure for compulsory acquisitions, suggests that a degree of preservation is intended. The Law of 1953 was clearly providing that the former owner was to be paid his costs of the arbitration by the acquiring authority. The language of Article 14(2) of the 1961 Law is different, but it does not seem to their Lordships to be so different as to require the conclusion that the Law was intended to make no provision for costs at all with the possible consequence that the former owner was to pay his own costs of a disputed valuation regardless of the circumstances.
7. Such a conclusion should not readily be reached in the context of the compulsory acquisition of land. The removal of any entitlement by the former owner to be paid his costs even after a wholly successful arbitration or even where there had been little merit from the outset in the acquiring authority's case would have been a remarkable change for the States to have made. Moreover the result would run counter to the basic idea of fairness whereby the cost of

resolving the dispute should fall on him who caused it. That concept was recognised in the Scottish case of City of Aberdeen District Council v. Emslie & Simpson (1995) S.C. 264 to which their Lordships were referred. In a compulsory acquisition it is the acquiring authority which has brought about the problem through its use of compulsory powers and while it can be argued that in particular cases there could be an unfairness in the authority being required to pay the owner's costs, the greater inequity must lie in an inevitable inability of the former owner to recover the costs of a determination of the compensation due to him on an acquisition of land which the authority have decided to pursue.

8. The appellant accepts that the provision is not to be construed as requiring the authority to pay every item of expense which the owner has incurred in the proceedings, but only the reasonable expenses which he has incurred. A corresponding construction must presumably be applied to Article 13 of the former Law and their Lordships see no difficulty in adopting such a construction. A similar restraint may fairly be imposed on the expenses incurred by the Board. If the provision is understood as referring to all reasonable expenses then there should be no difficulty in giving content to the word "all". It does not contradict the intention to exclude any unreasonable expenses.

9. It is of course correct that the language of Article 14(2) is to an extent different from that used in the earlier legislation. Moreover the new provision comes in an Article which deals in paragraph (1) with payment of fees to the members of the Board. But it was recognised by the Court of Appeal that paragraph (2) extends beyond expenses incurred by the Board. If the approach of comparing the new legislation with the old is adopted it is not unreasonable to identify in the paragraph the successor to the former Article 13, combined in the one provision with the payment of the expenses of other persons. That the word "costs" has been dropped and the word "expenses" used is consistent with the attempt to combine in the one provision the expenses of the Board, the costs and expenses of other people whom the Board may require to assist them in the proceedings and the costs and expenses of the former owner of the land which has been acquired.

10. It was suggested that the construction proposed by the appellant involved grave practical problems, there being no machinery laid down in the Law for determining whether particular expenses had been reasonably incurred nor whether the charge for particular items of expense was reasonable. In the present case the parties agreed to go to taxation, but the Greffier sent the matter back to the Royal Court, holding that only the Court could determine the merits of the respondent's criticisms of the appellant's bill of costs. It may well be that the Court would have some difficulty in dealing with the issues against the context of proceedings in which the Court had not itself been engaged. But the inquiry is far from being impracticable and, as the Court of Appeal recorded, the Royal Court had fixed a date for the determination of the issues. Any difficulty of this kind which is said to arise because of the provisions of Article 14(2) as construed by the appellant could presumably also have arisen under the earlier legislation. It was not suggested that any practical difficulty had arisen in the past under the Law of 1961 or its predecessor. The view which was voiced by the Royal Court in ***Baker v. Public Works Committee*** (1968) J.J. 965 which accords with the appellant's submission, appears not to have been fortified by any argument and the bare statement by the Court, unsupported by any reasoning, cannot be given much weight. But it may reflect an understanding of practice which may deserve respect.

    If the view which their Lordships are inclined to take was not correct, the result would be that no provision was made in the Law of 1961 to empower the making of an award to the appellant of his costs and expenses in the arbitration proceedings as distinct from the award of compensation. It is in that situation that the appellant turns to his alternative argument under Article 9(1)(g) of the Law. That provision comes at the end of a list of rules for the assessment of compensation. The list is in terms which substantially echo the familiar provisions which have for a long time prevailed in the United Kingdom for the assessment of compensation for compulsory acquisition. Article 9(1)(b) defines the value of the land in terms of the open market price. Article 9(1)(g) states:-

    "the provisions of sub-paragraph (b) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land."

11. Corresponding provisions can be found in section 2 of the Acquisition of Land (Assessment of Compensation) Act 1919 and section 5 of the Land Compensation Act 1961.

12. Where there is a tribunal which has power to award to the owner of the land the costs incurred in the hearing before the tribunal then it is understandable that those costs may not form part of his claim for compensation. The costs of the preparation of his claim, whether or not there will be a need for any hearing and determination by a tribunal, may properly form part of his claim as a matter of loss consequent on the acquisition but not directly based on the value of the land and may properly form part of the compensation awarded. That was the view taken in **London County Council v. Tobin** [1959] 1 W.L.R. 354. In ***Lee v. Minister of Transport*** [1966] 1 Q.B. 111 the surveyor's fees for preparing, negotiating and settling the claim for compensation were held to form a proper part of the compensation. In the present case, if the view which their Lordships have taken on the interpretation of Article 14(2) was incorrect, the appellant would have no means of claiming the costs and expenses which the appellant has incurred in the arbitration proceedings as distinct from his claim for compensation. In such circumstances their Lordships consider that the costs and expenses should form part of the appellant's claim, albeit necessarily unquantified at the outset, so that after consideration by the Board it could include such items and amounts as it considered to be reasonable as an element in the award. Again in this context the costs and expenses can only be those which were reasonably incurred and are reasonably assessed. As was observed in ***Director of Buildings and Lands v. Shun Fung Ironworks Ltd.*** [1995] 2 A.C. 111 at 126, the law expects those who claim recompense to behave reasonably and losses or expenditure incurred unreasonably cannot sensibly be said to be caused by the act of the

acquiring authority. Their Lordships do not see that there is a need for such an element in the claim to be estimated at even an approximate figure at the outset, provided that notice is given that it is intended to include the matter in the claim for the adjudication of the determining body. However in the present case not only does the point not arise, in light of the view taken by their Lordships, but it appears that the appellant made no claim before the Board for his costs so that the Board had no opportunity of adjudicating upon the matter. It is difficult to see how he could have raised it after the Board had made their award.

The matter has become further complicated by more recent developments. Their Lordships were informed that in March 1995 the appellant took proceedings by way of judicial review seeking to quash the decision of the Board. These proceedings came before the Royal Court between 5th November and 10th December 1996, very shortly after the hearing and the decision in the present proceedings. On 17th February 1997 the Royal Court delivered judgment. The copy which was produced to their Lordships begins *"An order must be made quashing the Award as being ultra vires and remitting the task of valuation to the Board"* with certain directions. Their Lordships were informed that an appeal has been taken by the respondent against this decision and the appeal is due to be heard on 9th February 1998. This development, which may not have been explained to the Court of Appeal in the present proceedings, adds significantly to the complexity of the whole case. If a fresh award is required problems may arise as to the practicalities of the matter being determined by the same Board as heard the matter before. And if the whole matter has to be looked at afresh by a Board differently constituted there could at least be a question whether the provisions of the 1994 Law would apply rather than those which have been the subject of the present proceedings.

13. In light of these developments it may be that the debate in the present appeal is premature or may even become academic. However their Lordships have considered it proper to express their opinion on the points argued before them and in the light of the view which they have reached they will humbly advise Her Majesty to allow the appeal and declare that on a proper construction of the Law of 1961 the Royal Court has jurisdiction to order the acquiring authority to pay to the party from whom the lands have been acquired all reasonable costs incurred by him in the proceedings before the Board. Whether the costs were reasonably incurred and whether they are reasonably quantified are matters for the Royal Court to determine. The respondent must pay the appellant's costs of the appeal to the Court of Appeal and before their Lordships' Board.