

31328

IN THE PRIVY COUNCIL

No. 17 of 1950.

ON APPEAL FROM

THE HIGH COURT OF AUSTRALIA

UNIVERSITY OF LONDON
W.C.1

20 JUL 1953

INSTITUTE OF ADVANCED
LEGAL STUDIES
Appellant

B E T W E E N :

GRACE BROS PTY LIMITED
(Plaintiff)

- and -

THE COMMONWEALTH OF AUSTRALIA
and THE MINISTER OF STATE FOR
THE INTERIOR (Defendants) Respondents

CASE FOR THE RESPONDENTS

Record

1 This is an appeal by special leave from a judgment and order of the High Court of Australia dated the 17th April, 1946, allowing a demurrer by the Respondents to the Appellant's statement of claim and dismissing the Appellant's motion for an injunction and the Appellant's suit whereby the Appellant challenged the validity of the acquisition by the Commonwealth of its property in Sydney known as the Grace Building and claimed relief based on the illegality of the acquisition and the subsequent use of the property by the Commonwealth.

PP. 14-15

2. On the 4th March, 1949, special leave was granted to the Appellant to enter and prosecute its appeal as to the following questions, viz :-

PP. 47-49

(a) Whether the Appellant is entitled to be compensated under Section 29(1) of the Lands Acquisition Act 1906-1936 (hereinafter called "the Act") or upon a common law basis (i.e. whether Section 29(1) is ultra vires or not);

P. 49, LL. 12-16

(b) As to the principle upon which such compensation is to be given; but not as to the question whether the actual acquisition under the said Act is invalid.

3. The Act was passed by the Parliament of the Commonwealth of Australia in pursuance of the power conferred by Section 51 (xxx) of the Commonwealth of Australia Constitution which authorises the said Parliament to make laws with respect to,
10 inter alia :-

"(xxx) the acquisition of property on just terms from any State or person for any purpose in respect of which the Parliament has power to make laws".

4. Sections 26, 27, 28, and 29 of the Act are as follows :-

PART IV. - COMPENSATION.

DIVISION 1. - RIGHT TO COMPENSATION.

20 26. Where any land (other than Crown land) is acquired by compulsory process, the owner of the land shall, if deprived of the land in whole or in part, be entitled to compensation under this Act.

27. (1) Where any Crown land is acquired by compulsory process, the State shall be entitled to compensation under this Act.

30 (2) The compensation shall be estimated as if the State were the proprietor of an estate in fee simple in the land, subject to any estate or interest which any person had in the land at the time of its acquisition by the Commonwealth.

(3) The State shall not be entitled to compensation in respect of the loss of any rights of dominion, taxation, or revenue.

28. (1) In determining the compensation under this Act, regard shall be had (subject to this Act)

to the following matters :-

- (a) The value of the land acquired;
- (b) The damage caused by the severance of the land acquired from other land of the person entitled to compensation; and
- 10 (c) The enhancement or depreciation in value of other land adjoining the land taken or severed therefrom of the person entitled to compensation by reason of the carrying out of the public purpose for which the acquired land was acquired.

(2) The enhancement or depreciation in value shall be set off against or added to the amount of the value and damage specified in paragraphs (a) and (b) of sub-section (1) of this section.

29. (1) The value of any land acquired by compulsory process shall be assessed as follows :-

- 20 (a) In the case of land acquired for a public purpose not authorized by a Special Act, according to the value of the land on the first day of January last preceding the date of acquisition; and
- (b) In the case of land acquired for a public purpose authorized by a Special Act, according to the value of the land on the first day of January last preceding the first day of the Parliament in which the Special Act was passed.

30 (2) The value of the land shall be assessed without reference to any increase in value arising from the proposal to carry out the public purpose.

5. Prior to the 24th October, 1945, the Appellant P.3, L.27-P4
 was the owner in fee simple of land in Sydney on L5
 which was erected the Grace Building which by P.8 LL 8-19
 notification published in the Commonwealth of P.4 LL 6-35
 Australia Gazette on the 24th October, 1945, in P.8 L.42-P.9
 pursuance of the Act was compulsorily acquired by L.9.
 the Commonwealth from the Appellant. P.10, L.21-P.11.L9

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- PP.1-3. 6. On the 21st January, 1946, the Appellant issued a writ of summons out of the High Court of Australia and by its statement of claim claimed :-
- PP.3-6.
- P.5.LL 36-7. (a) a declaration that the Act is void and of no effect;
- P.5.LL 38-41. (b) a declaration (alternatively to (a)) that the notification referred to in paragraph 5 of this case is void and of no effect;
- P.5.L 42-
P.6.L 5. 10 (c) an injunction restraining the respondents from selling, disposing of, altering, demolishing, or otherwise dealing or interfering with the said land and building thereon;
- P.6.LL 6-12. (d) an enquiry as to the loss and damage sustained by the Appellant by reason of the wrongful acts of the Defendants in demolishing and altering parts of the building and an order for the payment by the Respondents of the amount of such loss and damage;
- P.6.LL 13-15. 20 (e) an order for costs; and
- P.6.LL 16-17. (f) such further or other relief as the nature of the case may require.
- P.13. 7. The Respondents demurred to the statement of claim on the grounds :-
- P.13.L 13. (a) that it discloses no cause of action;
- P.13.LL 14-18. (b) that the Act and every part thereof is a valid exercise of the legislative power of the Parliament of the Commonwealth of Australia; and
- P.13.LL 19-28. 30 (c) that the notification referred to in paragraph 5 was a valid exercise of the power conferred on the Governor General by the said Act.
- PP.6-7. 8. On the 15th February, 1946, the Appellant moved for an injunction restraining the Respondents from selling, disposing, leasing, further altering,

demolishing or otherwise dealing or interfering with the said land and building and by an order made by Williams J. on the 25th February, 1946, this motion was referred to the Full Court for hearing at the same time as the demurrer in the action.

P.39,LL 13-20.

10 9. On the hearing together of the demurrer and the motion before the Full Court the Appellant submitted inter alia that the Act is invalid because it does not provide just terms within Section 51(xxxi) of the Commonwealth of Australia Constitution in that :-

- (a) it fixes a date anterior to the date of acquisition as the date on which the value of the land acquired is to be made;
- (b) it limits the compensation payable to the value of the land as distinct from the value of the land to the dispossessed owner;
- 20 (c) it fails to provide adequate interest upon the moneys payable between the date of acquisition and the date when the moneys are paid; and
- (d) it fails to make moneys legally available to pay the compensation.

10. The Respondents submitted inter alia that the Act is valid and argued :-

- 30 (a) That section 51(xxxi) of the Commonwealth of Australia Constitution invests the Parliament of the Commonwealth with a power to make laws with respect to the acquisition of property on just terms.
- (b) That a law made pursuant to this power with respect to the acquisition of land is not beyond the legislative power of the Parliament because in some particular case or cases the compensation thereby provided to an expropriated owner is or may be less than compensation assessed at large upon general legal principles.

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- (c) That in determining whether the terms as to compensation provided by a general Act with respect to the acquisition of land are or are not just within the meaning of section 51(xxxi) regard should be had to the general operation of the Act.
- (d) That such an Act will only be held to be beyond the legislative power on the ground that just terms are not provided where the terms are clearly unreasonable or unjust.
- (e) That the terms provided by section 29(1) of the Act are not unreasonable or unjust.
- (f) That the provisions of section 29 relating to the assessment of compensation pursuant to the Act are in all the circumstances just and reasonable.
- (g) That the Act does not limit compensation to the value of the land acquired in the abstract as distinct from the value of land to the dispossessed owner.
- (h) That if it was necessary to provide for payment of interest the rate of 3% prescribed by section 40 of the Act was not inadequate or unreasonably low.
- (i) That it should not be presumed that the Commonwealth would not honour its legal obligations.
- PP.14-15. 11. The Full Court of the High Court of Australia (Latham C.J., Starke, Dixon and McTiernan J.J., Williams J. dissenting as to part) allowed the Respondents' demurrer, dismissed the motion for an injunction and dismissed the action.
- PP.15-38. 12. Latham C.J., Starke, Dixon and McTiernan J.J. rejected all the submissions of the Appellant, upheld all the submissions of the Respondents and held that the whole of the Act was valid.
- PP.38-46. 13. Williams J. was of opinion that the demurrer should be overruled but the motion and action

dismissed because section 29(1) (a) of the Act was invalid but was severable from the rest of the Act by the operation of section 15A of the Acts Interpretation Act 1901-1941. In arriving at this conclusion his Honour accepted the Appellant's submission that section 29(1) (a) of the Act did not provide just terms because it fixed a date anterior to the date of acquisition as the date on which the value of the land acquired should be ascertained and he held that this provision could in many cases create injustice. With this exception Williams J. rejected the Appellant's submissions.

P.43,L 3 -
P.45,L.40

14. On the hearing of this appeal the Respondents will submit that the appeal is incompetent on the ground that as to the question whether section 29(1) (a) of the Act is valid the appeal is an appeal from a decision of the High Court upon a question as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States in respect of which a certificate is required under section 74 of the Commonwealth of Australia Constitution. The last mentioned section provides as follows :-

"74. No appeal shall be permitted to the Queen in Council from a decision of the High Court upon any question, howsoever arising, as to the limits inter se of the Constitutional powers of the Commonwealth and those of any State or States, or as to the limits inter se of the Constitutional powers of any two or more States, unless the High Court shall certify that the question is one which ought to be determined by Her Majesty in Council.

"The High Court may so certify if satisfied that for any special reason the certificate should be granted, and thereupon an appeal shall lie to Her Majesty in Council on the question without further leave.

"Except as provided in this section, this Constitution shall not impair any right which the Queen may be pleased to exercise by virtue of her Royal prerogative to grant special leave of appeal from the High Court to Her Majesty in Council.

The Parliament may make laws limiting the matters in which such leave may be asked, but proposed laws containing any such limitation shall be reserved by the Governor-General for Her Majesty's pleasure."

15. With respect to question (a) set out in paragraph 2 of this case the Respondents submit that section 29(1) (a) of the Act is a valid enactment which provides just terms for the acquisition of land and in support of that submission propose to argue upon the grounds (a) to (g) inclusive set out in paragraph 10 hereof.

16. With respect to question (b) set out in paragraph 2 of this case the Respondents submit :-

(a) that, if section 29(1) (a) of the Act is valid, the Appellant would be entitled to compensation assessed in conformity with the provisions of the Act and not on any other basis;

(b) that, if section 29(1) (a) of the Act is invalid it is severable from the remainder of the Act by virtue of section 15A of the Acts Interpretation Act 1901-1941, and in that event the Appellant would be entitled to compensation assessed in conformity with the provisions of the Act other than section 29(1) (a) thereof.

17. The Respondents further submit that in any event the Appellant was not entitled to any part of the relief claimed and the demurrer to the Appellant's statement of claim was properly allowed and its motion for an injunction was properly dismissed.

18. The Respondents therefore submit that for the reasons set out hereunder the appeal should be dismissed.

REASONS.

(1) Because the Appellant is seeking to appeal from a decision of the High Court upon a question as to the limits inter se

of the Constitutional powers of the Commonwealth and those of any State or States and the High Court has not granted a certificate under section 74 of the Commonwealth of Australia Constitution.

- (2) Because section 29(1) (a) of the Act is a valid enactment and provides just terms for the acquisition of land.
- 10 (3) Because the terms provided by section 29(1) of the Act are not unreasonable or unjust.
- (4) Because even if section 29(1) is beyond the legislative power of the Commonwealth Parliament the Appellant is not entitled to any of the relief claimed in its statement of claim.
- (5) Because the order appealed from is right and should be affirmed.

A.R. TAYLOR.

FRANK GAHAN.

R.ELSE-MITCHELL.

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C A S E

FOR THE RESPONDENTS.

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