Michaelmas Term
[2019] UKPC 46
Privy Council Appeal No 0019 of 2018

JUDGMENT

Mohammed (Appellant) *v* Gomez and others (Respondents) (Trinidad and Tobago)

From the Court of Appeal of the Republic of Trinidad and Tobago

before

Lady Hale
Lord Wilson
Lord Carnwath
Lord Lloyd-Jones
Lady Arden

JUDGMENT GIVEN ON

19 December 2019

Heard on 22 October 2019

Appellant
Ian L Benjamin SC
Roger Kawalsingh
Pierre Rudder
(Instructed by Charles
Russell Speechlys LLP)

Respondents
Ramesh L Maharaj SC
Robert Strang

(Instructed by BDB
Pitmans LLP)

LORD CARNWATH:

1. In this appeal the appellant, Ashmeed Mohammed, challenges the decision of the Court of Appeal, disagreeing with the trial judge, that the three respondents are entitled to equitable interests in the homes built and maintained by them on his property during the ownership of his predecessors.

Background

Facts

2. The parties are all related and well-known to each other. They all live in Hillside Terrace, Maracas, St Joseph. The houses of the three respondents were built on three plots within a larger ten acre parcel of land owned by the appellant, who lives in another house in the same terrace. Their occupation of the plots goes back many years, dating respectively from 1966, 1958 and 1963. At that time the larger parcel was owned by Aziz and Elvina Andrews ("the Andrews" - also related by marriage to one of the respondents). In 1969 it was acquired by the appellant's father (Haniff Mohammed), and, following his death in 2004, it passed to the appellant in March 2012.

3. Before the respondents went into occupation the larger parcel was uncleared forest. Each claimed to have entered into possession on the basis of an agreement with the Andrews ("the Andrews agreements") to the effect that: they would clear and develop the land, paying rent, and have the right to buy at market value assessed at the date of the agreements. There was no dispute that over the following years they had cleared the land, which included digging into some mountainous areas to create flat surfaces; and that they spent substantial amounts of money building, expanding and maintaining their homes (although there was some dispute as to the precise extent of the work and expenditure). There was also no dispute that they continued to pay rent to the Andrews and their successors until 2011, after which the appellant declined further payment, and in due course sought to recover possession. The respondents countered by commencing the present proceedings.

Legislation

4. The Rent Restriction Act (c 59:50) was in force from 1941 until 2002. It applied to various categories of building land, dwelling-houses and other buildings (section 3), and (by section 14(1)) restricted a landlord's right of possession to the cases there set

out. Section 4 gave the President power by Order to exclude from its scope certain categories of premises. As from 12 February 1954 the Rent Restriction (Exclusion of Premises) Order ("the 1954 Order") excluded from the protection of the Act all new buildings erected after that date "together with any land appurtenant thereto to be occupied therewith".

5. On 1 June 1981, the Land Tenants (Security of Tenure) Act (c 59:54) ("the 1981 Act") came into force. The 1981 Act applied to tenancies of land on which a "chattel house" used as a dwelling was erected or in the process of being erected, and converted such tenancies into 30 year statutory leases, beginning on the day the 1981 Act came into force. "Chattel house" was defined as including -

> "… a building erected by a tenant upon land comprised in his tenancy with the consent or acquiescence of the landlord and affixed to the land in such a way as to be incapable of being removed from its site without destruction;"

The tenants of such statutory leases had an option to renew the lease for a further 30 years, exercisable by notice before the end of the first 30 year term (section 4(3)) and an option to purchase the land, at a price not exceeding half the open market value of the land without the chattel house, exercisable at any time during the term of the lease (section 5(5)).

6. The background to the 1981 Act, which was designed to deal with the social problems arising from the proliferation of so-called "chattel houses", was described by Lord Walker of Gestingthorpe (*Gopaul v Imam Baksh* [2012] UKPC 1). He quoted the words of the Attorney General and Minister for Legal Affairs, Mr Richardson, in the House of Representatives introducing an earlier Bill (20 March 1981, cols 1808 and 1809):

> "Everyone knows how widespread and deep-seated the practice of tenants building houses on the lands of their landlords has been in Trinidad and Tobago. It is as old as the abolition of slavery and the introduction of the indentured system in this country. With the progress of time, the movable one-room houses have given place to irremovable dwellings of steel and reinforced concrete, but the law has lagged behind, failing to catch up with and to reflect the realities of today.
>
> Because of the affluence, instead of having chattel houses tenants started to build real solid houses, houses of concrete and steel and as such they continue to call them chattel houses. This problem is

> peculiar to Trinidad and Tobago, so peculiar so grave, that what we have to do today is literally to change the Constitution so that those tenants would benefit. To do this, we would have to pass this Bill by a three-fifths majority in both Houses of Parliament."

7. It is common ground that the respondents' houses were within the scope of the 1981 Act when it came into force, and that accordingly (apart from any other rights) they were entitled to 30-year leases from 1 June 1981. They would also have been entitled to renew those leases by notices served before 1 June 2011, and to options to purchase during the course of their leases. This was in effect acknowledged in summer 2007 in an exchange of correspondence between lawyers for the second respondent and the appellant, but it does not seem to have been pursued at that time. There was no mention at that time of the Andrews agreements. At the trial the second respondent denied knowledge of this exchange, and the judge made no finding about it. In the event, no notices were served by any of the respondents within the time set by the 1981 Act, and accordingly their statutory rights under the 1981 Act lapsed.

The proceedings

8. On 20 June 2013 lawyers for the appellant wrote to each of the respondents informing them that, in default of notices, their tenancies under the 1981 Act had been determined, and that they were required to remove all structures and deliver vacant possession. On 12 November 2013 lawyers for the respondents replied claiming, first, that they were still tenants under the 1981 Act by virtue of oral notices of renewal, and, secondly, that they had entered and built their homes under the belief, induced by the appellant and his predecessors, that they would in future acquire the right to the plots. (At that stage there was no reference to any specific agreement or to the terms as to price.) On 22 July 2014 the respondents began the present proceedings claiming declarations that they were equitable owners of the three plots and other relief. The particulars of claim asserted that they had entered pursuant to the Andrew agreements, as mentioned above, including the right to buy their parcels at their open market value as undeveloped land, assessed at the date of the agreements.

The High Court

9. The claim was dismissed by the judge (Jones J) who held in summary that the respondents' evidence lacked credibility, and there was a lack of other corroborative evidence, documentary or otherwise, to prove the existence of the Andrews agreements; that their expenditure and the permanence of their buildings, and the lack of objection by successive owners, were equally consistent with the protection provided by the 1981 Act and its predecessor, the Rent Restriction Act; and that the existence of the Andrews agreements, and in particular the alleged price, were inherently improbable.

The Court of Appeal

10. The respondents appealed. On 26 April 2017, the Court of Appeal (Jamadar, Smith and Rajkumar JJA) unanimously allowed their appeals on the main issue. Rajkumar JA gave the only reasoned judgment. He held that the court was entitled to revisit the judge's findings of fact, since they had been based on a material misdirection as to the applicability of the Rent Restriction Act. The protection of the Act had been excluded by the 1954 Order, and accordingly did not provide an explanation for their decision to erect permanent structures on the land or the lack of objection by the owners. As to the inherent improbability of the alleged agreements, the judge should have separated out the undisputed from the improbable. While it was open to the judge to reject the agreement in the exact terms as alleged by the respondents, she had failed to give adequate weight to the undisputed evidence as to the erection of permanent structures and continuing expenditure, with the acquiescence of the Andrews and of the appellant's father.

11. He considered that the alternative case on estoppel by acquiescence was open on the pleadings, and did not stand or fall on the proof of the Andrews agreements in the terms alleged. Examining the facts, in their statutory and family context, there was sufficient material to support a finding of proprietary estoppel, which should be given effect by a remedy consistent with the position of tenants under the 1981 Act who had renewed their tenancies. The court declared that they were entitled to 15 year tenancies commencing 31 May 2011, with options to purchase at any time during the terms of their tenancies at half market value at that date.

12. On 30 October 2017 the Court of Appeal granted final leave to appeal.

Issues in the appeal

13. For the appellant Mr Benjamin SC submits in summary: first, that the Court of Appeal misconstrued the 1954 Order, but that in any event it was not a sufficient reason for overturning the judge's findings of fact; secondly, that the court was wrong both in holding that a claim in estoppel by acquiescence was open on the pleadings and in finding that case made out on the evidence; thirdly, that it erred in the nature and form of equitable relief granted by its order. Mr Maharaj SC for the respondents defends the reasoning of the Court of Appeal on all points.

14. The Board will take these three issues in turn.

The Rent Restriction Act

15. The judge's reference to the Rent Restriction Act came at a relatively late stage of the judgment, after she had expressed a critical view of much of the respondents' oral evidence. Against the background, and given the lack of other corroboration, it is understandable that their counsel placed considerable weight on the inferences to be drawn from their work and expenditure on the ground, and the response or lack of response by successive owners.

16. To put this point in context it is necessary to set out the relevant passages of the judgment in full:

> "The claimants submit that the fact of the permanence of the buildings erected on the land and the money expended by them in this regard is evidence corroborative of the existence of the agreements. I do not agree. In my opinion the nature of the buildings on the land and the rent receipts are equally applicable to a finding that the claimants were simply tenants of building land under the [1981] Act and its predecessor the Rent Restriction Act. Indeed the rationale for introducing the [1981] Act was for the protection of persons in a similar position to the claimants: tenants of building land who owned large buildings that were incapable of being removed without being destroyed." (para 65)

Later in the judgment she came back to the Rent Restriction Act as the first part of her assessment of the "inherent implausibility or improbability" of the then claimants' case:

> "71. Under the Rent Restriction Act there was no requirement on a landlord to clear and develop building land before renting to tenants. This was land rented to the tenant specifically for the purpose of the erection of a chattel house used as a dwelling. For such a tenancy therefore the claimants would have been required to clear and develop the lands themselves and build their houses at their own cost.
>
> 72. Why would the Andrews bind themselves to sell land to the claimants at a price fixed at the value of the land as undeveloped in 1958 to 1963. What benefit would the Andrews have obtained from this agreement? ... Further the claimants, as tenants of building land under the Rent Restriction Act, would already have had some measure of security of tenure. Why would this agreement have been necessary?"

17. She came back to this issue as point (d) in her overall assessment:

> "Taking all these facts into consideration that is: (a) the lack of credibility on the part of the claimants, (b) that the only evidence of this agreement comes from them; (c) the lack of support of their claim by any contemporaneous documents; *(d) that the evidence in support of their claim is equally relevant to the position as contended by the defendant* and (e) the inherent [improbability] of the story presented by the claimants. I do not accept the evidence of the claimants as to the agreement made between them and the Andrews. In those circumstances the claimants' claim to each be a beneficiary of a proprietary estoppel in their favor with respect to the land occupied by them fails." (para 75 emphasis added)

18. The Court of Appeal held that her reliance on the Rent Restriction Act was a material misdirection entitling them to revisit her factual conclusions. Rajkumar JA said:

> "That misapprehension of the existence of statutory security of tenure at the time of entry into occupation by the appellants and construction of their permanent dwelling houses, amounted to a misdirection. As appears from the judgment, it directly influenced the trial judge's analysis of the evidence and, in particular, the assessment of the significance of the fact that permanent houses were constructed upon the appellants' entry into occupation of their respective parcels. That assessment in turn was a key element in her reasoning and conclusion that there had been no option granted to the appellants to purchase their respective parcels of land, on the terms alleged, or at all." (para 31)

19. The Board regards it as unfortunate that the effect of the Rent Restriction Act was not subject to detailed consideration in the lower courts. It was referred to by the judge for the first time in her judgment. In the Court of Appeal it seems initially to have been conceded that any protection provided by that Act had been removed by the 1954 Order, and the court may have proceeded on that basis. We were however shown a letter written to the court before judgment was handed down arguing that the 1954 Order did not apply, but it is not clear whether that came to the attention of the court. In any event, no objection was taken before the Board to Mr Benjamin relying on this point. He submitted that the 1954 Order was not material, because it was directed only to tenancies of buildings with their appurtenant land, and did not apply where, as here, a tenancy related to the "building land" alone.

20. The Board would be reluctant to determine such an issue of interpretation of a local statute, without the assistance of fuller discussion in the domestic courts, which are likely to be more familiar with its context and background. However, it is unnecessary to do so for the purposes of the appeal. The Board is satisfied that the judge, in what was generally an impressive and carefully reasoned judgment, erred in this respect.

21. Whatever the correct interpretation of the 1954 Order, the judge was wrong to introduce the Rent Restriction Act for the first time in her judgment, without reference to the parties. Further, the mere existence of some form of protection under that Act would have been of little relevance unless there was reason to think that the respondents were aware of it and relied on it. That issue was not explored at all at the hearing nor in the judgment. Although there was some cross-examination of the respondents' knowledge of the 1981 Act, the judge made no specific findings about that. The possible availability of statutory protection at an earlier stage was not mentioned by anyone. The Board is also satisfied, contrary to Mr Benjamin's submission, that the Court of Appeal was right also to regard this as a material part of the judge's overall reasoning, for the reasons it gave.

22. It follows that this ground of appeal fails.

Proprietary Estoppel

The principles

23. Before turning to the judgments under this heading, it is necessary to refer briefly to the principles governing different forms of proprietary estoppel. Of particular assistance, in the Board's respectful view, is the discussion of the authorities, judicial and academic, by Robert Walker LJ (or Lord Walker as he became) in a succession of cases in the Court of Appeal and House of Lords: *Gillett v Holt* [2001] Ch 210; *Jennings v Rice* [2002] EWCA Civ 159; *Thorner v Major* [2009] UKHL 18; [2009] 1 WLR 776.

24. In *Thorner v Major* [2009] UKHL 18; [2009] 1 WLR 776, Lord Walker at the outset of his speech commented on the difficulty of precise definition:

> "this appeal is concerned with proprietary estoppel. An academic authority (Simon Gardner, *An Introduction to Land Law* (2007) p 101) has recently commented:

> ‘There is no definition of proprietary estoppel that is both comprehensive and uncontroversial (and many attempts at one have been neither).’”

However, he noted a measure of agreement among most scholars that -

> “… the doctrine is based on three main elements, although they express them in slightly different terms: a representation or assurance made to the claimant; reliance on it by the claimant; and detriment to the claimant in consequence of his (reasonable) reliance …” (para 29)

25. Later in the judgment he commented on a submission that the required assurance must be “clear and unequivocal”. He said:

> “There is some authority for the view that the ‘clear and unequivocal’ test does not apply to proprietary estoppel. That view was expressed by Slade LJ in *Jones v Watkins* (unreported) 26 November 1987; [1987] CA Transcript No 1200. The same view has been expressed in at least the past three editions of *Treitel, Law of Contract*. The current (12th) ed (2007) by Mr Edwin Peel, in a passage comparing promissory and proprietary estoppel, states, at para 3-144:
>
> > ‘promissory estoppel arises only out of a representation or promise that is “clear” or “precise and unambiguous”. Proprietary estoppel, on the other hand, can arise where there is no actual promise: eg where one party makes improvements to another’s land under a mistake and the other either knows of the mistake or seeks to take unconscionable advantage of it.’
>
> The present appeal is not of course a case of acquiescence (or standing-by) … But if all proprietary estoppel cases (including cases of acquiescence or standing-by) are to be analysed in terms of assurance, reliance and detriment, then the landowner’s conduct in standing by in silence serves as the element of assurance. As Lord Eldon LC said over 200 years ago in *Dann v Spurrier* (1802) 7 Ves 231, 235-236:

> ‘this court will not permit a man knowingly, though but passively, to encourage another to lay out money under an erroneous opinion of title; and the circumstance of looking on is in many cases as strong as using terms of encouragement.’
>
> 56. I would prefer to say (while conscious that it is a thoroughly question-begging formulation) that to establish a proprietary estoppel the relevant assurance must be clear enough. What amounts to sufficient clarity, in a case of this sort, is hugely dependent on context …” (paras 54-55)

26. In the light of that discussion, the Board doubts how far it is possible or useful in the context of proprietary estoppel to draw fine distinctions between different categories. It is true that such issues seem to have attracted lively academic debate (see eg the references in *Snell’s Equity* 33rd ed (2014), para 12-033). However, as Lord Walker makes clear, once one has moved beyond claims based on specific contractual rights, there may be no clear division between the nature and quality of any alleged verbal assurances, and the conduct of the respective parties in response. Depending on the factual context acquiescence may be seen as one aspect of assurance.

27. To similar effect is his earlier judgment in *Jennings v Rice* where he underlined the dangers of “over-simplification”:

> “The need to search for the right principles cannot be avoided. But it is unlikely to be a short or simple search, because (as appears from both the English and the Australian authorities) proprietary estoppel can apply in a wide variety of factual situations, and any summary formula is likely to prove to be an over-simplification. The cases show a wide range of variation in both of the main elements, that is the quality of the assurances which give rise to the claimant’s expectations and the extent of the claimant’s detrimental reliance on the assurances. The doctrine applies only if these elements, in combination, make it unconscionable for the person giving the assurances (whom I will call the benefactor, although that may not always be an appropriate label) to go back on them.” (para 44)

Later in the same judgment he explained why the uncertainty of any assurances will not be fatal to the claim but may affect the appropriate remedy:

> "If the claimant's expectations are uncertain (as will be the case with many honest claimants) then their specific vindication cannot be the appropriate test. A similar problem arises if the court, although satisfied that the claimant has a genuine claim, is not satisfied that the high level of the claimant's expectations is fairly derived from his deceased patron's assurances, which may have justified only a lower level of expectation. In such cases the court may still take the claimant's expectations (or the upper end of any range of expectations) as a starting point, but unless constrained by authority I would regard it as no more than a starting point." (para 47)

28. In *Thorner v Major* (paras 61-64) he returned to the degree of "certainty" required, in the light of submissions based on the recent speech of Lord Scott of Foscote for the House in *Cobbe v Yeoman's Row Management Ltd* [2008] 1 WLR 1752. Although there needed to be certainty in the identification of the relevant property, that did not necessarily apply to the assurances:

> "Mr Simmonds relied on some observations by my noble and learned friend Lord Scott of Foscote in *Cobbe's* case [2008] 1 WLR 1752, paras 18 to 21, pointing out that in *Ramsden v Dyson* (1866) LR 1 HL 129, 170, Lord Kingsdown referred to 'a *certain* interest in land' (emphasis supplied). But, as Lord Scott noted, Lord Kingsdown immediately went on to refer to a case where there was uncertainty as to the terms of the contract (or, as it may be better to say, in the assurance) and to point out that relief would be available in that case also. All the 'great judges' to whom Lord Kingsdown referred, at p 171, thought that even where there was some uncertainty an equity could arise and could be satisfied, either by an interest in land or in some other way." (para 64)

29. Rajkumar JA (para 74) also referred to *Inwards v Baker* [1965] 2 QB 29, in which a father had allowed an expectation to be created in the mind of his son, that a bungalow built by him on the father's land would be and remain his home. Lord Denning MR (relying on *Plimmer v Wellington Corpn* (1884) 9 App Cas 699, 710-11) rejected the submission that the principle only applied when there was an expectation of some precise legal term:

> "But it seems to me, from *Plimmer's* case in particular, that the equity arising from the expenditure on land need not fail merely on the ground that the interest to be secured has not been expressly indicated … the court must look at the circumstances in each case to decide in what way the equity can be satisfied."

The equity was satisfied by holding that "the defendant can remain there as long as he desires to as his home." (pp 36-38)

The present case - the pleadings

30. Rajkumar JA acknowledged that the main emphasis before the judge had been on what he called "the frontally pleaded case" that the Andrews agreements gave rise to equitable rights based on proprietary estoppel. However he considered that:

> "… an alternative case was sufficiently raised on the pleadings and moreso in the evidence that the respondent's father and the respondent himself acquiesced in the belief by the appellants, (howsoever derived), in the permanence of, and security of their tenure."

This argument, he thought, had been sufficiently "telegraphed" in the closing submissions and in various references in their pleaded cases which he gave (para 52). It is enough to cite one example (para 10.3 of the first respondent's particulars of claim) in which, after a reference to the Andrews agreement, it was alleged that the appellant's father and his daughter had -

> "… encouraged and/or led [the first respondent] and her husband to believe that if she continued to rent the lands, maintain the lands and her home, that she and her husband would in the future own the lands."

31. The Board sees no reason to question the exercise of the Court of Appeal to allow this issue to be more fully developed in the appeal. It would not normally interfere in a case management decision of this kind. In this case it is satisfied that there was adequate material in the pleadings to support their decision, and that there was no unfairness to the appellant. Although the use in the pleadings of terms like "agreement" or "option to purchase" might tend to suggest claims based on contractual rights, that was clearly not the intention. The case was founded, not merely on the words used by the original owner (however described), but as much on the subsequent actions of the respondents and of acquiescence (lack of action) on the part of successive owners. Accordingly, although the emphasis had shifted to the aspect of acquiescence, that did not represent a substantial departure from the original case.

Proprietary estoppel on the facts

32. There remains the question whether the Court of Appeal was entitled on the evidence, and in the light of the judge's other findings, to uphold the respondents' case as now formulated. Rajkumar JA summarised his conclusions early in the judgment as follows:

> "The undisputed facts, namely a belief by the [respondents] in an entitlement to security of tenure by their ability to eventually purchase the land, giving rise to their erection of, and continued investment in, permanent structures in formerly undeveloped, hilly, and forested terrain, are consistent with an agreement with the Andrews on an option to purchase as contended. In fact, on a balance of probabilities, such an option to purchase is more likely than not. The substantial investments over the years in the houses such that they are now valued at $920,000.00, $295,000.00, and $1,425,000.00-respectively; can hardly be explained otherwise.
>
> The trial judge cannot be faulted in dismissing as inherently incredible the embellishment on the price in that option to purchase alleged for the reasons, that she did, including the alleged right to purchase the land at its value at the time of the alleged agreement with the Andrews. However, shorn of the disputed term, there was still sufficient material on the [respondents'] pleaded case, and sufficient evidence, based on the undisputed facts and the actions of the appellants, to substantiate the allegation that an option to purchase had in fact been conferred on the [respondents], unembellished by the details alleged as to its price.
>
> The misapprehension of law identified above, coupled with the [respondents'] focus and emphasis at trial on establishing the price at which it is alleged the option to purchase was to be exercised, led the trial judge to fail to fully appreciate the significance of the [respondents'] willingness and readiness (i) to immediately construct permanent structures in that difficult terrain and (ii) thereafter to expand and renovate them with (iii) the acquiescence of both the Andrews and the [appellant's] father when he later became the owner.
>
> While this may have been the situation of many tenants of land, who erected permanent structures on rented land in which they had a limited interest at best, in this case the parties were all related.

> Their assertion that the [respondents] were the beneficiaries of an option to purchase, whatever its terms, was (a) consistent with the relationship among the parties, and (b) fortified by the actions of the [respondents] in constructing permanent homes, consistent with a belief in a security of tenure, which had not been conferred by statute at the time that they constructed their homes, and (c) consistent with the acquiescence of the Andrews, Haniff, and even to some extent the [appellant] in the expansions and renovations of the [respondents'] houses …
>
> Further, and /or in the alternative, even in the absence of such an inference, on the undisputed facts there was sufficient to satisfy the evidential and legal requirements of proprietary estoppel by acquiescence, such as to give rise on that basis also to equitable rights in the [respondents]." (paras 19-25)

33. The Board sees no error of principle in that overall assessment of the evidence. The term "option to purchase" is clearly not used in its strict legal sense, but must be understood in the context of the close, family relationship between the parties. Mrs Gomez (the first respondent), whose evidence (according to the judge - para 48) was "not really shaken in cross-examination", had spoken in her oral evidence of a relatively informal understanding: Mr Andrews had told them that they could "go ahead and build and whenever we have the money to purchase the land we could purchase it". That would be sufficient to support the Court of Appeal's conclusion.

34. There is nothing in the judge's assessment to undermine her evidence on this point. Mrs Gomez's credibility, in her view, was affected by the admission that the present action was not prompted by any actual desire to purchase the land, but to avoid dispossession. It is not clear why that should be thought to have affected her credibility on this aspect, particularly in a family context (in her words: a "close family and everybody living good … We never think about buying land."). That her primary concern was to remain in possession was hardly surprising at her age, and not inconsistent with her understanding that she could purchase if she wished to do so. Indeed her admission that she was not motivated by a wish to buy might be thought to make it less surprising that she was mistaken about the terms of purchase, and did not mention the agreement at an earlier stage. Account also has to be taken of the critical view taken by the judge of parts of the evidence of the other respondents, but the Court of Appeal was entitled to see this as not detracting from the inferences to be drawn from the undisputed facts.

35. Accordingly, the Board finds no reason to interfere with the decision of the Court of Appeal upholding the case on proprietary estoppel. The issue was then how to give effect to the equity so created.

Equitable Remedy

36. There was no dispute as to the principles governing this aspect of the case. Rajkumar JA (para 79) set out the relevant passage in the judgment of Jamadar JA in *Mills v Roberts* (unreported) 16 September 2016; (Civil Appeal No T 243 of 2012), in which he summarised the principles derived from the advice of the Board in *Henry v Henry* [2010] UKPC 3. He noted in particular the guidance that the court should adopt "a cautious approach" and consider "all the circumstances" in order to discover "the minimum equity necessary to do justice to the claimant".

37. Having considered the balance of advantage and disadvantage to the respondents, and taken account of the judge's rejection of their case as to the purchase price, he commented:

> "…after construction of homes and occupation of premises for over 50 years the appellants are now elderly persons who should not at this stage of their lives have to be dispossessed and seeking alternative accommodation.
>
> Further they should have the option, in accordance with the option to purchase that was, on a balance of probabilities more likely than not offered to them at the time of their entry into possession, to secure their investment in their homes within a reasonable period by purchasing the land on which they stand.
>
> We consider that, while the appellants insisted they were not statutory tenants, in the special circumstances of this case, their situation was in practical terms, though not legal terms similar to those of persons who were, and who had renewed their statutory tenancies." (paras 86-88)

38. He considered accordingly that they should be afforded a remedy "consistent with that of persons who were statutory tenants, and who had renewed their statutory tenancies". He concluded:

> "The respondent sought to claim possession after what he considered to be the expiration date of their alleged statutory tenancies - May 31st 2011. While the appellants were not statutory tenants, that is the date at which the value of the land should be assessed for the purpose of any option to purchase.

> Accordingly in the circumstances, it would be consistent with equity to give effect to an option to purchase; giving further·effect to the security of tenure that they have enjoyed for over 50 years, and declare and quantify their interest to be a tenancy for a 15 year period commencing May 31st 2011 with an option to purchase the parcels of land on which their houses stand, by themselves, or their heirs or assigns, at any time within that period at half of the market value as at May 31st 2011." (paras 90-91)

39. Mr Benjamin challenges various aspects of the court's reasoning on this part of the case, which he says went beyond what was necessary to satisfy the "minimum" equity, and effectively granted them the benefit of the 1981 Act without having complied with its terms. However, in the Board's view the court made a careful assessment of all the relevant factors, and did not go outside its wide judgmental discretion. In particular the Board sees no error of principle in the court's reference to the security provided under the 1981 Act by way of analogy in the unusual circumstances of this case.

40. However, that being the analogy, the Board finds it difficult to understand the court's adoption of 31 May 2011 as the valuation date, regardless of when the option might be exercised. Under the 1981 Act the relevant value is taken at the date of the exercise of the option. The mere fact that the appellant sought to claim possession at that date is not a reason for freezing the date of valuation in relation to an option which was to be available within a 15 year period thereafter. In the Board's view the order of the Court of Appeal should be varied to that limited extent. The words "market value of the land as at May 31st 2011" should be replaced by the words "market value as at the date of exercise of the option".

Conclusion

41. For the reasons set out above, the Board confirms the order of the Court of Appeal, subject only to the variation specified in the previous paragraph.